BALDEV SINGH

v.

STATE OF PUNJAB

(Criminal Appeal No.1303 of 2005 etc.)

SEPTEMBER 20, 2013

[A.K. PATNAIK AND GYAN SUDHA MISRA, JJ.]

PENAL CODE, 1860:

ss. 302 read with s.120-B – Police party picking up 7 members of complainant's family – Victims did not return – Conviction by courts below u/ss 364, 452, 120-B and 302 – Held: Evidence adduced is that the seven persons abducted by appellants were seen in different police stations and also in residential quarters near the police station — On this evidence, court cannot hold that the two appellants have killed the seven abducted persons only because they have not been traced or are found missing — No material has been placed before the court to establish that the last police station in which the seven persons or any of them were kept was under the control of the appellants — In absence of such evidence, the finding of guilt recorded by courts below u/s. 302 against appellants, was not correct either on facts or on law — Therefore, conviction of appellants u/s. 302 read with s. 120-B is set aside.

ss. 364 and 452 – Seven members of a family picked up by police party – Victims did not return – Held: It has been established that appellants had gone to the house of complainant in the early morning and picked up 7 members of his family – Therefore, conviction of appellants u/ss 364 and 452 was rightly maintained by High Court – The sentence of three years with fine u/s 452 is maintained – However, in the facts of the case, keeping in view Illustration (h) to s.220(1)CrPC, as seven persons had been abducted by

A *appellants, they were guilty of seven offences and should be punished for each of these offences u/s. 364 — Therefore, it is directed that the fine of Rs.4000/- as imposed by trial court and the period of rigorous imprisonment of five years will be for each of the seven offences of abduction and the five years*
B *rigorous imprisonment for each of the seven offences of abduction will run consecutively and not concurrently – Code of Criminal Procedure, 1973 – s.220(1), III.(h).*

Delay/Laches:

C *Delay in lodging of FIR - Held: Delay in lodging of FIR often results in embellishment as well as the introduction of a distorted version of what may have actually happened, but the facts of each case have to be examined to find out whether the delay in lodging the FIR is fatal to prosecution*
D *case — In the instant case, there is enough evidence of the fact that complainant was afraid of lodging the complaint to local police station which was under the control of one of the accused-appellants – Delay of 2 months and 21 days in lodging the FIR has been explained by the facts and the*
E *evidence adduced – FIR.*

Delay in recording statements u/s 161 CrPC – Held: Complainant in the very first complaint had named the appellants as the persons who raided their house and picked up seven members of his family, and therefore, the fact that
F *there was considerable delay of two years from the date of lodging the FIR in recording of statements of witnesses does not make their evidence in this regard doubtful.*

Evidence:

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Witness at enmity with accused – Evidence of — Held: Testimony of such a witness has to be carefully scrutinized by the court before it is accepted, but only on account of enmity, court cannot discard evidence of the witness
H *altogether.*

Code of Criminal Procedure, 1973: A

ss.161 and 162, Explanation – Improvements in deposition of witness over his statement u/s 161 – Held: In view of Explanation to s. 162, unless the omission in the statement recorded u/s. 161 of a witness is significant having regard to the context in which the omission occurs, it will not amount to a contradiction to the evidence of the witness recorded in court – In the instant case, courts below rightly considered the omissions as not material omissions amounting to contradictions covered by the Explanation to s.162. B C

The appellants (a DSP and a constable of police) and 9 others were prosecuted for commiting offences punishable u/ss. 120-B, 148, 452, 364, 365, 302 read with s. 120-B and s. 201, IPC. The prosecution case was that on 29-10-1991 at about 5:00 am, the appellants and other policemen raided the house of the complainant (PW 13) and picked up seven members of his family, who thereafter never returned. The trial court convicted the appellants u/ss. 452, 364 and 302 read with s. 120-B IPC and sentenced them to various terms including imprisonment for life u/s. 302 IPC. The High Court dismissed the appeal. D E

Allowing the appeals in part, the Court F

HELD: 1.1. There cannot be any doubt that delay in the lodging of the FIR often results in embellishment as well as the introduction of a distorted version of what may have actually happened, but the facts of each case have to be examined to find out whether the delay in lodging the FIR is fatal to the prosecution case. In the instant case, from the evidence of PW-3 it is evident that the terrorists were active in the State of Punjab and the police was taking action against the terrorists and in such a state of affairs, PW-3 was apprehensive of the G H

A consequences of lodging an FIR against appellants, one of whom was a Deputy Superintendent of Police in control of several police stations and the other was a police constable. Therefore, after seven members of his family were picked up on 29.10.1991, PW-3 waited with B the hope that they would be released by the police and only after all his efforts to get them released failed, he lodged the complaint on 19.01.1992. The fact that the complainant addressed the complaint not to the police station but to the Director General of Police is enough C evidence that PW-3 was afraid of lodging the complaint to the local police station which was under the control of appellant no. 1. Considering the fact situation, the delay of 2 months and 21 days on the part of PW-3 to lodge the complaint to the Director General of Police, D Punjab, had been explained by PW-3 and this is not a case where the prosecution case could be disbelieved on the ground of delay in lodging the FIR. [Para 16-17] [562-F-H; 563-A-B, G-H]

Gauri Shanker Sharma vs. State of U.P. 1990 SCR 29 = E 1990 (Supp) SCC 656 – relied on.

1.2. As regards the delay in recording s. 161 statements of witnesses, it is evident from the evidence of PW-3 and PW-4 that on the stated date and time, the appellants came F in 3-4 vehicles and took the seven members of their family in the Gypsy. Further, in the very first complaint lodged by PW-3 on 19.01.1992, he has named the appellants as the persons who raided their house and picked up seven members of his family. Therefore, the delay of two years G from the date of lodging the FIR in recording of statements of PW-3 and PW-4 and other witnesses does not make their evidence that the appellants picked up seven members of their family on the stated date and time, doubtful. [Para 18] [564-A-B, E-G]

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Jagjit Singh alias Jagga vs. State of Punjab **2005 (1) SCR 559 =2005 (3) SCC 689**; *State of Andhra Pradesh vs. S. Swarnalatha & Ors.* **2009 (12) SCR 289 = 2009 (8) SCC 383 - held inapplicable.** A

1.3. Where there is previous enmity between the witness and the accused, the evidence of the witness has to be carefully scrutinized by the court before it is accepted, but only on account of such enmity the court cannot discard the evidence of the witness altogether. Moreover, witnesses who are not related to a victim of an offence are in some situations difficult to find. The appellants had gone to the house of the complainant (PW-3) early in the morning at 5.00 am on 29.10.1991 and picked up seven members of his family and it is difficult to find persons witnessing the incident at the stated time. Moreover, one of the appellants was a Deputy Superintendent of Police and, therefore, no one would prefer to narrate the incident either before the Investigating Officer or before the court. In such a situation, the court has to consider carefully and cautiously the evidence of witnesses who may have had enmity with the accused. On such careful and cautious consideration, it is difficult to discard the evidence of PW-3 when it is corroborated by the evidence of PW-4 as well as the complaint dated 19.01.1992 (Ext. PB) of PW-3 which had been registered as the FIR. Therefore, the evidence of PW-3 and PW-4 cannot be rejected on the ground of enmity. [Para 20] [566-B-G] B C D E F

State of U.P. vs. Kishanpal and Others **2008 (11) SCR 1048 = 2008 (16) SCC 73 – relied on.** G

1.4. With regard to the plea of improvements in the deposition of PW-3 over his statements recorded u/s. 161 Cr.P.C, in view of Explanation to s. 162 Cr.P.C, unless the omission in the statement recorded u/s. 161, Cr.P.C. of a witness is significant and relevant having regard to the H

A context in which the omission occurs, it will not amount to a contradiction to the evidence of the witness recorded in court. There is no omission in the evidence of PW-3 with regard to the facts about the picking up of sever. members of his family from his house on the stated date B and time and the names of the victims in his statement u/s. 161 Cr.P.C. The trial court and the High Court had rightly considered the omissions with regard to the nature, number and colour of the vehicles and the number of men who had come as well as what happened C after the incident as not material omissions amounting to contradictions covered by the Explanation to 162, Cr.P.C. Therefore, the High Court rightly maintained the conviction of the appellants u/ss. 364 and 452 IPC. [Para 21] [566-H; 567-A, B-C, E-H]

D 2.1. From the evidence of PW-3 to PW-6, it is evident that the victims abducted by the appellants were subsequently seen in different police stations and also in residential quarters near the police station. No material has been placed before the court to establish that the last E police station in which the seven persons or any of them was kept was under the control of the appellants. In absence of such evidence, the finding of guilt recorded by courts below u/s. 302 IPC against the appellants, was not correct either on facts or on law. [Para 27] [571-D, E-F F; 572-B-C]

2.2. Therefore, the conviction of the two appellants u/s. 302 read with s. 120-B, IPC is set aside, but their conviction u/ss. 364 and 452, IPC is maintained. The sentence of three years rigorous imprisonment and a fine G of Rs.3000/- for the offence punishable u/s. 452, IPC is maintained. But so far as the sentence and fine u/s. 364, IPC is concerned, in view of Illustration (h) to s. 220(1) of the Cr.P.C., as seven persons had been abducted by the appellants, they were guilty of seven offences u/s. 364, H IPC, and they should be punished for each of these

offences. Therefore, it is directed that the fine of Rs.4000/- as imposed by the trial court and the period of rigorous imprisonment of five years, will be for each of the seven offences of abduction; and the five years rigorous imprisonment for each of the seven offences of abduction will run consecutively and not concurrently. [Para 28] [572-C-G]

Meharaj Singh (L/Nk.) vs. State of U.P. **1994 (5) SCC 188;** *Vishnu Davare vs. State of Maharashtra* **2004 (9) SCC 431;** *Radha Kumar vs. State of Bihar (Jharkhand)* **2005 (10) SCC 216;** *Sunil Kumar Sambhudayal Gupta (Dr.) & Ors. Vs. State of Maharashtra* **2010 (15) SCR 452 = 2010 (13) SCC 657;** *Sahadevan and Another vs. State of Tamil Nadu* **2012 (4) SCR 366 = 2012 (6) SCC 403;** *LIC of India vs. Anuradha* **2004 (3) SCR 629 = 2004 (10) SCC 131;** *Prithipal Singh & Ors. vs. State of Punjab & Anr.* **2012(14) SCR 862 = 2012 (1) SCC 10;** *Gulam Chaudhary & Ors. Vs. State of Bihar* **2001 (3) Suppl. SCR 279 = 2001 (8) SCC 311;** *Badshah and Ors. Vs. State of Uttar Pradesh* **2008 (2) SCR 766 = 2008 (3) SCC 681 – cited.**

Case Law Reference:

1990 SCR 29	**relied on**	**para**
2005 (1) SCR 559	**held inapplicable**	**para 7**
2009 (12) SCR 289	**held inapplicable**	**para 7**
2008 (11) SCR 1048	**relied on**	**para 7**
1994 (5) SCC 188	**cited**	**para 7**
2004 (9) SCC 431	**cited**	**para 7**
2005 (10) SCC 216	**cited**	**para 7**
2010 (15) SCR 452	**cited**	**para 7**
2012 (4) SCR 366	**cited**	**para 10**
2004 (3) SCR 629	**cited**	**para 11**

A	**2012(14) SCR 862**	**cited**	**para 12**
	2001 (3) Suppl. SCR 279	**cited**	**para 15**
	2008 (2) SCR 766	**cited**	**para 15**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
B No 1303 of 2005.

From the Judgment & Order dated 06.04.2005 of the High Court of Punjab & Haryana at Chandigarh in Criminal Appeal No. 221-DB of 1998.

C WITH

Crl. A. No. 1380 of 2005

Amarender Saran, Kawaljit Kochar, Kusum Chaudhary for the Appellant.

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V. Madhukar, AAG, Paritosh Anil, Anivta Cowshish, Srajita Mathur, Kuldip Singh for the Respondent.

The Judgment of the Court was delivered by

E **A.K. PATNAIK, J.** 1. These are appeals by way of special leave under Article 136 of the Constitution against the common judgment dated 06.04.2005 of the High Court of Punjab and Haryana in Criminal Appeal No.221-DB of 1998.

F **Facts of the case**:

2. The facts very briefly are that Inder Singh sent an application dated 19.01.1992 by registered post with A.D. to the Director General of Police, Punjab, for releasing seven members of his family. In the application, Inder Singh alleged
G that on 29.10.1991 at 5.00 a.m. Baldev Singh, Deputy Superintendent of Police, and Balwinder Singh, Police Constable (the appellants herein) and other police men raided their house and picked up seven members of his family. They are Sadhu Singh (his father), Hardev Singh (his son), Gurdip

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Singh and Amanjit Singh (his brothers), Sharanjit Singh (son of his younger brother Sajjan Singh) and Davinder Singh and Sukhdev Singh (two sons of his younger brother Khazan Singh). Inder Singh further stated in the aforesaid application that he has seen his family members, who were picked up, in Fatehgarh Churian, Police Station Kalanaur, Dera Baba Nanak and Police Station Kathu Nangal and on 08.01.1992, his son Sarwan Singh has seen these persons in the police vehicle in Amritsar. In the application, Inder Singh stated that he had fear that the appellant-Baldev Singh may kill his family members or may implicate in some case and he requested that they be released from illegal detention of the police at the earliest. By Memo dated 21.03.1994, the Inspector General of Police, Crime Branch directed the Senior Superintendent of Police, Majitha, to get the case registered and accordingly a formal FIR was registered under Section 364 of the Indian Penal Code (for short 'IPC') on 23.03.1994 in Police Station, Kathunangal, District Majitha. After investigation, charges were framed against nine accused persons including the appellants and as per the amended charges, nine accused persons were tried for offences under Sections 120-B, 148, 452, 364, 365, 302 read with Section 120-B and 201, IPC.

3. At the trial, fourteen prosecution witnesses were examined. Inder Singh was examined as PW-3 and he stated that on 29.10.1991 the two appellants accompanied by twenty to twenty five persons came in vehicles to the house and took away the seven members of his family. PW-3 has further deposed that he and his other relatives had approached the higher authorities but all his efforts to get the seven persons released did not yield any result. The evidence of PW-3 was corroborated by his brother Sajjan Singh who was examined as PW-4 as well as Jarnail Singh, a relation of PW-3, who was examined as PW-5. Sarwan Singh, the son of PW-3, was also examined as PW-6 and he stated that on 08.01.1992 he happened to be present at the shop near the bus stand at Amritsar when he noticed a Police Gypsy going on the road

A and saw that his brother Hardev Singh was sitting in the vehicle and even he gave a signal by raising his hand. He also stated that there were other persons sitting in the vehicle but he did not see them and made an attempt to chase the vehicle but he could not do so. The appellants also examined as many as B eleven witnesses in their defence that they have not taken anybody in their custody as alleged by the prosecution.

4. The trial court rejected the defence of the appellants and convicted the appellants under Sections 452, 364, and 302 read with Section 120-B, IPC, by its judgment dated C 30.03.1998. The trial court thereafter heard the appellants on the question of sentence and sentenced the appellants to three years rigorous imprisonment and a fine of Rs.3,000/- for the offence of house trespass for wrongful restraint under Section 452, IPC, five years rigorous imprisonment and a fine of D Rs.4,000/- for the offence of abduction of Sadhu Singh, Gurdip Singh, Hardev Singh, Amanjit Singh, Sharanjit Singh, Davinder Singh and Sukhdev Singh in order to murder under Section 364, IPC and rigorous imprisonment for life and a fine of Rs.50,000/- for the offence of murder of Sadhu Singh, Gurdip E Singh, Hardev Singh, Amanjit Singh, Sharanjit Singh, Davinder Singh and Sukhdev Singh under Section 302 read with Section 120-B, IPC. Aggrieved, the appellants filed Criminal Appeal No.221-DB of 1998 before the High Court and by the impugned judgment dated 06.04.2005, the High Court dismissed the F appeal.

Contentions on behalf of the Appellants:

5. Mr. Amarendra Sharan, learned senior counsel appearing for the appellants, submitted that while the incident G was alleged to have taken place on 29.10.1991, the FIR was registered on 19.01.1992 and there was, thus, a delay of two months and twenty one days in lodging the FIR. He submitted that this delay is sought to be explained by the prosecution by saying that the complainant approached the Senior H Superintendent of Police and the Director General of Police

and thereafter the Courts and even a writ petition before this Court and only thereafter the complaint was registered as an FIR. Mr. Sharan submitted that PW-3 belonged to a family of prosperous farmers and his son PW-6 was serving in the police and his friend PW-5 was also a member of Punjab State Congress Committee and had easy access to the Chief Minister of the State and, therefore, the explanation given by the prosecution for the delay of two months and twenty one days in lodging the FIR cannot be accepted by the Court. He cited the decision in *Meharaj Singh (L/Nk.) v. State of U.P.* [(1994) 5 SCC 188] in which this Court has held that delay in lodging the FIR often results in embellishment as well as introduction of a coloured version or exaggerated story and the FIR loses its value and authenticity.

6. Mr. Sharan next submitted that there was enough evidence to show that there was enmity between the complainant and the appellants. In this regard, he referred to the evidence of PW-3, the complainant himself, that the brother of the appellant-Baldev Singh was earlier kidnapped by the terrorists on 18.10.1991 and the appellant-Baldev Singh was under the impression that Gurdip Singh (brother of PW-3) was responsible for getting Kuldip Singh kidnapped and earlier Kundan Singh, who was a co-accused with the appellants but acquitted by the trial court, had asked the family of PW-3 to accept some girl for marriage with the son of PW-3 Hardev Singh, but Hardev Singh rejected the proposal. He submitted that as there was enmity between the family of PW-3 and the appellants, PW-3 has lodged the false complaint against the appellants.

7. Mr. Sharan next submitted that the evidence of PW-3 and PW-4 on which the trial court and the High Court relied on for holding the appellants guilty, is not reliable because the statements were recorded under Section 161, Cr.P.C., for the first time in July, 1994 more than two years after the incident and this fact has been admitted by the Investigating Officer

A (PW-10), who recorded the statements. He cited the decisions of this Court in *Jagjit Singh alias Jagga v. State of Punjab* [(2005) 3 SCC 689] and *State of Andhra Pradesh v. S. Swarnalatha & Ors.* [(2009) 8 SCC 383] for the proposition that the delay in examination of a witness in the course of
B investigation if not properly explained creates a serious doubt about the reliability of the evidence of the witness.

8. Mr. Sharan referred to several improvements in the deposition of PW-3 over his statements recorded during investigation under Section 161, Cr.P.C. He cited *Ashok*
C *Vishnu Davare v. State of Maharashtra* [(2004) 9 SCC 431], *Radha Kumar v. State of Bihar (now Jharkhand)* [(2005) 10 SCC 216] and *Sunil Kumar Sambhudayal Gupta (Dr.) & Ors. v. State of Maharashtra* [(2010) 13 SCC 657], in which this Court has not believed the evidence of prosecution witnesses
D on account of improvements in the deposition of the witnesses made over their statements recorded under Section 161, Cr.P.C.

9. Mr. Sharan submitted that police personnel, namely,
E SSP Sita Ram and SSP Hardeep Singh Dhillon, whose names find place in the evidence of PW-3, PW-4 and PW-5, were material witnesses and yet have not been examined by the prosecution. He submitted that similarly, Sukhbans Kaur Bhinder, Member of Parliament, and Beant Singh, Chief
F Minister of the State, whose names also find place in the evidence of PW-3, were material witnesses, but have not been examined. He submitted that their evidence would have thrown sufficient light on the prosecution case and the Court should draw adverse inference against the prosecution for non-
G examination of these material witnesses.

10. Mr. Sharan submitted that there is no evidence whatsoever on record to show that the seven persons alleged to have been abducted by the police have been killed by the appellants. He cited the decision of this Court in *State of*
H *Karnataka v. M.V. Mahesh* [(2003) 3 SCC 353] in which it has

been held that in the absence of definite evidence to indicate that Beena had been done to death, the accused could not have been convicted merely on the circumstance that the accused and Beena were last seen together. He submitted that in this case, PW-3, PW-4 and PW-5 have stated that they had seen the seven persons in Fatehgarh Churian Police Station and Kalanaur Police Station and PW-6 has further stated that he saw and identified his brother Hardev in a Police Van on 08.01.1992 at Amritsar. Mr. Sharan submitted that on these facts, therefore, Section 106 of the Indian Evidence Act was not attracted and the burden was not on the appellants to prove that they had not killed the seven persons who were abducted by them. He cited *Sahadevan and Another v. State of Tamil Nadu* [(2012) 6 SCC 403] in which this Court has held that the last seen theory should be applied while taking into consideration the prosecution case in its entirety and keeping in mind the circumstances that precede and follow the point of being so last seen. He submitted that if the aforesaid principle as laid down by this Court in *Sahadevan and Another v. State of Tamil Nadu* (supra) is applied then the appellants could not be held guilty of the offence of murder of the seven persons.

11. Mr. Sharan next submitted that there is no evidence whatsoever before the court that the seven persons are dead and are not alive and the trial court has erroneously drawn the presumption that the seven persons are dead by applying Section 108 of the Indian Evidence Act. He cited the judgment of this Court in *LIC of India v. Anuradha* [(2004) 10 SCC 131 in which the principle behind Section 108 of the Indian Evidence Act is explained. He submitted that in any case, if there was any evidence against the appellants for the offence of murder of the seven persons under Section 302, IPC, the same should have been put to the appellants by the Court under Section 313, Cr.P.C., but this has not been done in this case. He vehemently argued that the conviction of the appellants for the offence of murder of seven persons under Section 302, IPC is without any evidence whatsoever.

A **Contentions on behalf of the State:**

12. Mr. V. Madhukar, learned counsel appearing for the State of Punjab, in his reply, submitted that in this case though the complaint was filed by PW-3 on 19.01.1992 nothing was done for quite sometime and, therefore, PW-3 approached this Court in a habeas corpus petition to secure the release of the seven members of his family and on 15.09.1994 this Court passed an order directing that an inquiry should be conducted by the Central Bureau of Investigation. He submitted that pursuant to the said order of this Court, the Director of the Central Bureau of Investigation submitted his report dated 15.12.1994 and thereafter the investigation was carried out by the Crime Branch of the Punjab Police and the charge-sheet was filed against the two appellants and others. He submitted that the delay in lodging the FIR in this case on the part of PW-3 must be on account of the fact that the complaint was against the police personnel themselves and PW-3 must be contemplating whether or not to lodge such a complaint. He submitted that this was, therefore, an extra-ordinary case and this Court has held in *Prithipal Singh & Ors. v. State of Punjab & Anr.* [(2012) 1 SCC 10] that in such an extra-ordinary situation, the Court has to bear in mind the peculiar facts and innovate the law accordingly. He submitted that in the extra-ordinary facts in which PW-3, had to lodge the FIR, the delay in lodging the FIR should be ignored by the Court.

13. Mr. Madhukar next submitted that the evidence of PW-3, PW-4 and PW-5 on material aspects of the case are that the appellants took into custody seven persons, who were members of the family of PW-3, on 29.10.1991 and this was the case of PW-3 in the complaint filed by him on 19.01.1992 as well as in his statement recorded under Section 161, Cr.P.C., in the course of the investigation. The omissions in the statements recorded under Section 161, Cr.P.C., which have been supplied during the evidence of the witnesses in Court, do not detract from this basic prosecution story and, therefore,

are not "contradictions" covered by the Explanation under Section 162, Cr.P.C. He further submitted that the delay in recording the statements under Section 161, Cr.P.C. in this extra-ordinary case should not be held fatal to the prosecution case as the main prosecution story that the appellants abducted seven members of the family of PW-3 has been consistently reiterated all throughout, from the date of the complaint made on 19.01.1992 to the dates of the examination of witnesses by the Court. He submitted that the motive of the appellants to abduct the seven members of the family of PW-3 obviously was revenge as will be clear from the evidence of PW-3 and thus the trial court and the High Court rightly believed the evidence of PW-3, PW-4 and PW-5.

14. Mr. Madhukar submitted that seven other police personnel who went along with the appellants to abduct the seven members of the family of PW-3 were not examined as prosecution witnesses as they were also accused persons and these seven persons, namely Kundan Singh, Sukhwinder Singh, Balwinder Singh, Gurmukh Singh, Amrik Singh, Nirmal Singh and Randhir Singh, have been acquitted by the trial court. He submitted that the only evidence which has come on record regarding Sita Ram, SSP, Batala, is that a message was received from him that seven persons will be collected from the office of Sita Ram, SSP. He submitted that if Sita Ram, SSP, would have been examined he would have only denied that he had given such message and hence non-examination of Sita Ram, SSP, as a witness in court should not be held against the prosecution.

15. Mr. Madhukar vehemently submitted that the appellant-Baldev Singh was a DSP in the Police Department and had control over all the Police Stations under him and if this fact along with the fact that the appellant-Baldev Singh abducted the seven members of the family of PW-3 are taken into consideration, then the burden of proving as to what happened to the seven persons abducted by him was on him under

A Section 106 of the Indian Evidence Act. He submitted that as the appellants have not discharged this burden of proving facts especially within their knowledge, the trial court and the High Court rightly held that the seven abducted persons have been murdered by the appellants. In support of this argument, he cited
B the decisions of this Court in *Ram Gulam Chaudhary & Ors. v. State of Bihar* [(2001) 8 SCC 311] and *Badshah & Ors. v. State of Uttar Pradesh* [(2008) 3 SCC 681]. He submitted that in these two cases it was held that even though the dead-body of a person alleged to have been murdered was not
C discovered, conviction for murder under Section 302, IPC, can still be recorded if there exists strong circumstantial evidence and if the accused is unable to offer any explanation regarding facts especially within his knowledge as provided under Section 106 of the Indian Evidence Act. He submitted that this
D is, therefore, not a fit case where this Court should interfere with the concurrent findings of fact recorded by the trial court and the High Court against the appellants and should dismiss the appeal.

Findings of the Court:

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16. The first question that we have to decide is whether the delay of 2 months and 21 days in lodging the FIR could make the prosecution case one which is not believable. There cannot be any doubt that delay in the lodging of the FIR often
F results in embellishment as well as the introduction of a distorted version of what may have actually happened, but the facts of each case have to be examined to find out whether the delay in lodging the FIR is fatal for the prosecution case. In the present case, we find from the evidence of PW-3 that the
G terrorists were active in the State of Punjab and the police was taking action against the terrorists and in such a state of affairs, PW-3 was apprehensive of the consequences of lodging an FIR against appellants, one of whom was a Deputy Superintendent of Police in control of several police stations and the other was a police constable. Hence, after seven
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members of his family were picked up on 29.10.1991, PW-3 waited for 2 months and 21 days with the hope that they would be released by the police and only after all his efforts to get them released failed, he lodged the complaint on 19.01.1992 (Ex.PB). The fact that the complainant addressed the complaint (Ex. PB) not to the police station but to the Director General of Police, Punjab, is enough evidence of the fact that PW-3 was afraid of lodging the complaint to the local police station which was under the control of the appellant Baldev Singh.

17. To illustrate this point, we may refer to *Gauri Shanker Sharma vs. State of U.P.* [1990 (Supp) SCC 656]. In this case, the facts were that Ram Dhiraj died of injuries received by him after his arrest while he was in police custody. The prosecution version was that he was beaten in police custody on 19.10.1971 by accused no.1 and his two companions after he was arrested from his residence and brought to the police station. Even though the High Court came to the conclusion that the deceased was beaten after his arrest, the High Court refused to place reliance on the direct testimony of three witnesses insofar as involvement of the Station House Officer of Police Station was concerned and one of the grounds for rejecting the evidence of the three prosecution witnesses was that the telegram was sent by PW-5 who had requested the Station House Officer not to beat the deceased on 23.10.1971, where as the prosecution case was that the injuries on the person of the deceased were caused on the evening of 19.10.1971. This Court held that the High Court has failed to appreciate that everyone thinks twice before deciding to make so serious a complaint against a police officer and there was no serious delay as to throw out the evidence of the three witnesses on the ground of delay. In our view, considering the fact situation, the delay of 2 months and 21 days on the part of PW-3 to lodge the complaint to the Director General of Police, Punjab, had been explained by PW-3 and this is not a case where the prosecution case could be disbelieved on the ground of delay in lodging the FIR.

A 18. We may next consider the contention of Mr. Sharan that the trial court and the High Court should not have relied on the evidence of witnesses when their statements under Section 161, Cr.P.C. were recorded for the first time in July, 1994, almost more than two years after the incident and lodging of B the FIR. In *Jagjit Singh alias Jagga v. State of Punjab* (supra) cited by Mr. Sharan, the relevant facts were that PW-6, who was a young girl of 7 years age and resided in a different village than that of Jagjit Singh did not say in her earlier statements that she knew him, but in her statement recorded by the C Investigating Officer under Section 161, Cr.P.C. she claimed to have known him and on these facts this Court held that in her earlier statements she did not name him and the delay in examining her in course of investigation also creates a serious doubt in the absence of any explanation for her late examination D after 3 days and further held that though she may have witnessed the occurrence, she did not know Jagjit Singh and she had no opportunity of knowing or seeing him earlier and she has involved him at the instance of her father when her statement was recorded by the Investigating Officer. In the facts of the present case, on the other hand, PW-3 and PW-4, who E have stated in their evidence before the court that on 29.10.1991 the appellants Baldev Singh and Balvinder Singh came in 3-4 vehicles and took the seven members of their family in the Gypsy and knew the two appellants who lived in village Ram Diwali which was at a small distance from the F village of PW-3 and PW-4. Further, in the very first complaint lodged by PW-3 on 19.01.1992, PW-3 has named the appellants Baldev Singh and Balvinder Singh as the persons who raided their house and picked up seven members of his family. Hence, the fact that there was considerable delay of two G years from the date of lodging the FIR and recording of statements of PW-3 and PW-4 and other witnesses does not make their evidence, that the appellants picked up seven members of their family on 29.10.1991 at 5.00 a.m., doubtful.

H 19. In *State of Andhra Pradesh v. S. Swarnalatha & Ors.*

(supra) also cited by Mr. Sharan, the prosecution relied on the evidence of PW-3, a taxi driver, who claimed to have taken the accused persons to the house where the two persons died homicidal death and he also said that the accused persons entered into the house and asked him to stay on at that place and after half an hour all of them came out of the house and asked him to drop them at Ring Road, Dilsukhnagar. This Court found that PW-3 in his statement under Section 161, Cr.P.C. had mentioned the names of only two accused persons, but in his deposition before the Court, he took the names of six accused persons and further PW-3 was not taken by the Investigating Officer to the house in question to identify the house where the incident has taken place. On these facts, this Court held that the statement of PW-3 which was recorded by the Investigating Officer only on 31.01.1999 when the murder of the deceased had taken place on 03.12.1997 was not reliable, particularly when his statement was also recorded under Section 164, Cr.P.C. before the recording of his statement under Section 161, Cr.P.C. Thus, considering the peculiar facts of this case, the delay in recording the statement of witnesses by the Investigating Officer under Section 161, Cr.P.C. was held against the prosecution by this Court. In the facts of the present case, the investigation was against the Deputy Superintendent of Police and several other police persons and the investigation was being conducted by the Investigating Officer of the Crime Branch of the State Police. There was, therefore, resistance within the police against the investigation and it was only on account of intervention of this Court in Writ Petition (Criminal) No. 221 of 1994 that there was progress in the investigation and the statements of witnesses came to be recorded by the Investigating Officer. This being explanation for the delay in examining the witnesses under Section 161 Cr.P.C., we are not inclined to accept the statement on behalf of the appellants that the prosecution witnesses should not be relied on because of delay in recording the statements under Section 161, Cr.P.C.

A 20. We are also unable to accept the submission of Mr. Sharan that the evidence of PW-3 and PW-4 ought not to be relied on by the trial court and the High Court when there was evidence to show that there was enmity between PW-3 and PW-4 on the one hand and the appellants on the other hand. B Where there is previous enmity between the witness and the accused, the evidence of the witness has to be carefully scrutinized by the Court before it is accepted, but only on account of such enmity the Court cannot discard the evidence of the witness altogether [See *State of U.P. vs. Kishanpal and* C *Others* (2008) 16 SCC 73]. Moreover, witnesses who are not related to a victim of an offence are in some situations difficult to find. This is one such situation where the appellants have come to the house of the complainant (PW-3) early in the morning at 5.00 am on 29.10.1991 and picked up seven D members of his family and it is difficult to find persons witnessing this incident at 5.00 a.m. during the last part of October. Moreover, one of the appellants was a Deputy Superintendent of Police and therefore even if some one had witnessed the incident, he would prefer not to narrate the incident either before the Investigating Officer or before the E Court. In such a situation, the Court has to consider carefully and cautiously the evidence of witnesses who may have had enmity with the accused. On such careful and cautious consideration, it is difficult to discard the evidence of PW-3 that the appellants picked up seven members of his family on F 29.10.1991 at 5.00 a.m. from his house particularly when it is corroborated by the evidence of PW-4 as well as the complaint dated 19.01.1992 (Ext. PB) of PW-3 which had been registered as the FIR. In our considered opinion, therefore, the trial court and the High Court could not have rejected the G evidence of PW-3 and PW-4 on the ground of enmity between PW-3 and PW-4 on the one hand and the appellants on the other hand.

21. We may now consider the submission of Mr. Sharan H that there were improvements in the deposition of PW-3 over

his statements recorded during the investigation under Section 161 Cr.P.C. The Explanation under Section 162, Cr.P.C. provides that an omission to state a fact or circumstance in the statement recorded by a police officer under Section 161, Cr.P.C. may amount to contradiction if the same appears to be significant and otherwise relevant having regard to the context in which such omission occurs and whether any omission amounts to a contradiction in the particular context shall be a question of fact. Thus, unless the omission in the statement recorded under Section 161, Cr.P.C. of a witness is significant and relevant having regard to the context in which the omission occurs, it will not amount to a contradiction to the evidence of the witness recorded in court. The evidence of PW-3 is that on 29.10.1991, the appellant Baldev Singh accompanied by the appellant Balwinder Singh accompanied by twenty to twenty five persons came in three to four vehicles to his house and Sadhu Singh (his father), Hardev Singh (his son), Gurdip Singh (his brother), Amanjit Singh (his son), Sharanjit Singh (son of his brother, Sajjan Singh), Davinder Singh and Sukhdev Singh (sons of his brother Khazan Singh) in all seven persons were made to sit in the Gypsy and the appellants took these seven persons with them. There is no omission with regard to these facts about the picking up of seven members of his family from his house on 29.10.1991 and the names of these seven members of his family in the statement of PW-3 recorded under Section 161 Cr.P.C. The omissions in the statement of PW-3 recorded under Section 161 Cr.P.C. are with regard to the nature, number and colour of the vehicles and the number of men who had come as well as what happened after the aforesaid incident on 29.10.1991. In our view, the trial court and the High Court had rightly considered these omissions as not material omissions amounting to contradictions covered by the Explanation under Section 162, Cr.P.C. In our view, therefore, the High Court rightly maintained the conviction of the appellants under Sections 364 and 452 IPC.

A B C D E F G H

A 22. We may now come to the submission of Mr. Sharan that there is no evidence whatsoever on record to show that the seven persons alleged to have been abducted by the appellants have been killed by the appellants.

B 23. We find that PW-3 has stated in his evidence:

"All our men who kidnapped, were found present in PS Fatehgarh Churian and they were kept there for 10 days. We kept on meeting them during this period. Their condition was very bad. We used to go to them to supply C food and articles and clothing to meet their needs. Then these persons were shifted from Fatehgarh Churian to Kalanaur. I and my relatives Jarnail Singh, Kuldip Singh, Sajjan Singh used to go to meet our men in the said police station also. We found that all these persons had been D given severe beatings and out of them Gurdip Singh my brother and Amanjit Singh, his son, had received more serious injuries as compared to others. The conditions of these persons were very bad. After keeping our men at PS Kalanaur for ten days, then they were kept in PS E Fatehgarh Churian. Subsequently, 3 persons were taken to PS Dera Baba Nanak and 4 were taken to PS Kahnuwal. Sadhu Singh, Gurdip Singh and Amanjit Singh had been kept in PS Dera Baba Nanak, where as the other 4 were kept in PS Kahnuwal. We continued meeting them F from time to time in these police stations also. On 08.12.1991 4 persons, namely, Hardev Singh, Davinder Singh, Sukhdev Singh and Sharanjit Singh were shifted to PS Sadiq Faridkot from Kahnuwal Police Station."

"I mentioned that we kept on meeting our men during the G period of 10 days when they were detained in Police Station Fatehgarh Churian and also that their condition was very bad and we used to go there to supply food and articles and clothing to meet their needs."

H "In my statement in court I had mentioned that we had been

meeting our men at various Police Stations at Kalanaur, Fatehgarh Churian etc. and we had also been supplying food articles to them." A

Thus, as per the evidence of PW-3, after the seven members of his family were abducted, he had met them at different police stations and was supplying them food and articles and clothing to meet their needs. B

24. We also find that PW-4 in his statement has stated:

"We again approached Baldev Singh accused and he told us that our men will be sent back after his brother was traced. Thereafter, we continued to contact SSP of Batala for getting our men released because accused Baldev Singh was working as DSP under his control. SSP Sita Ram, however, continued postponing the matter promising that he would get our men released. Our men were kept from time to time at Police Station Fatehgarh Churian, Kalanaur, again Fatehgarh Churian and then to Kahnuwal and Dera Baba Nanak. We had been meeting our men from time to time in these Police Stations and we used to provide our men with food and clothes and other eatables. Subsequently 4 persons were sent to PS Sadiq." C D E

"Our men used to be kept in the residential quarters near the Police Station and we used to meet them there. Other men from public were not present there on these occasions. I had mentioned in my police statement that our men were taken to Police Station Fatehgarh Churian because our men had been subsequently seen by us." F

Hence, the evidence of PW-4 also is that the seven persons picked up by the appellants were kept at different places including Police Stations and residential quarters near the Police Station and their family members used to provide them with food and clothes and other articles and used to meet them. G

25. We further find that PW-5 has stated in his evidence: H

A "I then went to Gurdaspur. Then I learnt that our men were kept in Police Station Kahnuwal. I went there and I could find only 4 persons present there. The other 3 persons namely Sadhu Singh, his son Gurdip Singh and Son of Gurdip were not there."

B "I had also disclosed that I, Inder Singh, Sajjan Singh and wife, brother of Sajjan Singh has gone to PS Kalanaur and had met 7 persons."

"I had mentioned in my statement before Police about our C going to PS Kahnuwal and meeting 4 persons there."

"I did not meet the SHO of PS Kalanaur as the SHO could never permit us to meet our men. Voluntarily explained that I had met them in a stealthy manner, when a Head D Constable who had earlier remained posted at Quadian, had helped us in seeing them. I cannot tell his name. Head Constable had taken our 7 men, out of the particular room, so that we may meet them. All this, however, happened in the premises of the Police Station. We had gone there E during the day. There were other police officials and guard there. It is incorrect that I have given false evidence."

"We had gone to PS Kahnuwal. There was MHC there. I told him that I wanted to see my men who were detained there in the adjoining room in the Police Station and the F said MHC told me that I could meet them hurriedly and go away as there was lot of strictness in the quarters."

Thus, the evidence of PW-5 is also that he had met the seven persons after they were abducted by the appellants G in different Police Stations where there were other police officials and guards.

26. We also find that PW-6, who was the son of PW-3 and working as Police Constable at Amritsar has said in his evidence:

H

"On 08.01.1992 I happened to be present near the shops near Bus Stand. I noticed a police gypsy going on the road. I noticed that in the body of that vehicle my brother Hardev Singh was sitting. He also gave me a signal with his hand. There were other persons also in that vehicle, but I could see only my brother. I tried to pursue that vehicle but due to rush I could not reach the vehicle, and it slipped away. On the same day I sent a message to my father that I had seen my brother being taken away in a vehicle. Police also recorded my statement during investigation."

Hence, PW-6 also had seen his brother sitting in a police gypsy at Amritsar.

27. We, therefore find that the evidence adduced by PW-3, PW-4, PW-5 and PW-6 is that the seven persons abducted by the appellants were found in different police stations and also in residential quarters near the police station. On this evidence, the court cannot hold that the two appellants have killed the seven abducted persons only because the seven persons have not been traced or are found missing. Learned counsel for the State submitted that the appellant Baldev Singh was in control of all the police stations in his area but no material has been placed before the court to show which were the police stations which were under the control of the appellant Baldev Singh. No material has been placed before the Court to establish that the last police station in which the seven persons or any of the seven persons were kept was under the control of the appellant Baldev Singh and the other appellant Balwinder Singh. From the evidence of PW-3, we find that terrorism was prevailing in the State of Punjab at the time when the seven persons were abducted and action was being taken by the police against the terrorists. When the seven persons abducted by the appellants did not go missing immediately after their abduction and were found in different police stations in the State of Punjab and one of them was also found going in a Gypsy at Amritsar, the Court cannot hold that the seven abducted persons were last in the custody of the appellants and hence they must discharge the

A burden under Section 106 of the Evidence Act and must explain what they did to the seven abducted persons. The prosecution should have examined witnesses from amongst the police personnel or the Police Station to establish that the seven abducted persons were last seen in the custody of the B appellants. In absence of such evidence, the finding of guilt recorded by the trial court and the High Court under Section 302 IPC against the appellants, in our view, was not correct either on facts or on law.

28. We, therefore, set aside the conviction of the two C appellants under Section 302 read with Section 120-B, IPC but maintain the conviction of the appellants under Sections 364 and 452, IPC. The trial court has imposed a punishment of three years rigorous imprisonment and a fine of Rs.3000/- for the offence under Section 452, IPC and five years rigorous D imprisonment and a fine of Rs.4000/- for the offence under Section 364, IPC, and the High Court has maintained the aforesaid sentences for the two offences. We maintain the sentence and fine under Section 452, IPC. But so far as the sentence and fine under Section 364, IPC is concerned, we find E from illustration (h) under Section 220 of the Cr.P.C. that where an accused commits the same offence against three persons, then he can be charged with three offences. As seven persons had been abducted by the appellants, the appellants were guilty of seven offences under Section 364, IPC, and they should be F punished for each of these offences under Section 364, IPC. We, therefore, direct that the fine amount as imposed by the trial court will be Rs.4000/- for each of the seven offences of abduction and the period of rigorous imprisonment will be five years for each of the seven offences of abduction and these G five years rigorous imprisonment for each of the seven offences of abduction will not run concurrently but consecutively. In case, the fine amount of Rs.4,000/- is not paid, the appellants will have to undergo one more year of rigorous imprisonment. The appeals are allowed to the extent indicated above.

H R.P. Appeals partly allowed.