VIJAY RANGLAL CHORASIYA
v.
STATE OF GUJARAT
(Criminal Appeal No. 953 of 2009)

APRIL 25, 2014

[T.S. THAKUR AND C. NAGAPPAN, JJ.]

Penal Code, 1860:

s.364-A r/w s.120-B – Kidnapping for ransom – Out of 10 accused, 5 convicted – High Court further convicting one of the accused who had earlier absconded and when apprehended tried separately and acquitted by trial court – Appeal by two of 5accused convicted by trial court as also by accused whose acquittal was reversed by High Court – Held: As regards concurrent orders of conviction passed by trial court and High Court in respect of two appellants, there is no reason to take a view different from the one taken by courts below, as prosecution has proved guilt of two accused-appellants beyond reasonable doubt – There is no perversity in the view taken by the courts below to warrant interference under Art. 136 of the Constitution – In respect of appeal of the accused whose acquittal was reversed by High Court, the order passed by High Court is set aside and matter remitted to it for disposal afresh keeping in view the observations made in the judgment – Constitution of India, 1950 – Art. 136.

Evidence:

Voice in tape recorded machines – Voice spectography – Held: Voice of one of the accused, in tape recorded machine, was identified by witnesses as one of the callers who had demanded ransom for release of victim – Scientific officer examined Voice Spectrography of the caller to prove that voice recorded was of the accused – Peal Code, 1860 – s.163-A.

A *Code of Criminal Procedure, 1973:*

s.299 – Record of evidence in absence of accused – Accused absconding – Trial of other accused persons resulted in conviction of some of accused persons – Absconding accused later tried separately – Application of prosecution for transfer of depositions in earlier Sessions Trial to subsequent Sessions Trial rejected by trial court – Accused acquitted – High Court relying on the evidence in previous trial, convicting the accused – Held: High Court does not appear to have taken note of the rejection order — It has, on the contrary, erred in proceeding on the basis that the evidence adduced in the previous trial was evidence in the case against the appellant validly transferred u/s 299 — Even assuming that the deposition in terms of s. 299 had been transferred to the case against the appellant, it may have been open to appellant-accused to argue that such a transfer was not valid in the eyes of law and could not, therefore, be read against him — Matter remitted to High Court for hearing and disposal afresh in accordance with law keeping in view the observations made in the judgment.

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The appellants-accused A-2 and A-4 alongwith A2, A3, A5, A11, A7, A8, A9 and A10 were prosecuted for abducting PW-13 for ransom. The appellant, in criminal appeal no. 1125 of 2009 (A6), had absconded and was tried separately when apprehended. The trial court convicted A2 to A5 and A11 u/s 364-A read with s. 120-B, IPC and sentenced them to undergo imprisonment for life. A7, A8, A9, A10 and A6 were acquitted. In the appeals filed by the accused against their conviction and sentence and the State Government challenging the acquittal of A7 to A10 and A6, the High Court upheld the conviction and sentence of A2 to A5 and A11 and dismissed the appeal of the State Government against acquittal of A7 to A10. The High Court further reversed the acquittal of A6 and convicted him u/s 364-A read with

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s. 120-B IPC and sentenced him to imprisonment for life. A-3, A-4 and A-11 did not agitate the matter any further.

Disposing of the appeals, the Court

HELD: 1.1. In so far as the concurrent orders of conviction passed by the trial court and the High Court against A2 and A5 are concerned, on a careful appraisal of the evidence adduced by the prosecution, there is no reason much less a compelling one to take a view different from that taken by the courts below, as the depositions of witnesses examined at the trial have proved the guilt of these two accused persons beyond a reasonable doubt. The evidence adduced at the trial connects these two accused persons with the commission of the crime they stand charged with. That evidence is reliable and has been rightly accepted by the courts below. [para 12] [766-G-H; 767-A-B]

1.2. In particular, A2 was one of the persons who had participated in the actual act of abduction of the victim, and was identified by him not only in the test identification parade but also in the court. There is no reason to disbelieve the version given by the victim in his deposition especially because the nature of the incident, the time and place from where the victim was abducted and the fact that the victim had not only been physically assaulted but had spent considerable time with the abductors in the Ceilo car used for the abduction, gave to the victim sufficient time to recognise the accused persons and identifying them at the test identification parade conducted subsequently. It is significant to note that the incident had left an indelible impression upon the victim's mind. Therefore, there is no reason to disbelieve his evidence that A-2 was one of those who had participated in the crime. [para 12] [767-B-E]

1.3. Besides, the deposition of PW8, PW-9 and PW-

A 10, who are owners of STD PCOs, prove that A2 had made calls from the telephone booths owned by them. They identified A-2 as the person who made calls from their telephone booths. Further, PW-16 and PW-17, both owners of STD PCOs have testified that on 16 and 17 July, B 1997 calls were made from their PCOs on a number that happens to be the residential telephone number registered in the name of the victim's father. There is, in the light of these depositions and other evidence discussed by the trial court and the High Court at some C length, no doubt that A2 was indeed one of the persons who was involved in the act of abduction of the victim for ransom in conspiracy with the remaining accused persons found guilty by the courts below. Accordingly, there is no reason to interfere with the judgments and D orders passed by the courts below holding A2 guilty u/s 364-A read with s. 120-B, IPC nor is there any reason to interfere with the sentence of life imprisonment awarded to him. [para 13-14] [767-F-H; 768-A-E]

1.4. As regards A-5, the trial Court as also the High E Court have both carefully appraised the evidence adduced by the prosecution to connect this accused with the incident of abduction and to prove the charge framed against him. Apart from other evidence adduced at the trial, deposition of PW3, father of the victim has F also been relied upon by the courts below. The witness identifies the voice of A5 as one of the callers who had demanded ransom for release of the victim. Depositions of PW-11 and PW-12 who happen to be uncles of the victim also support the prosecution case in this regard. G More importantly they have identified the voice in the tape recorded machines set up by the police for the surveillance of the residential telephone number of the victim's family. Also important in this connection are the depositions of PW-28, a Divisional Engineer of telephone H department and PW29, a Scientific Officer of the CBI, who

had examined the Voice Spectrography of the caller to prove that tape recorded voice was that of A5. [para 15-16] [768-F-G, H; 769-A-D] A

1.5. It has been established by the evidence on record that the police got its first break from the information provided by A5 that led to the arrest of the remaining accused persons and the seizure of arms and ammunitions from them, apart from discovery of the place from where the victim was eventually rescued. The deposition of the witnesses, thus, connects the appellant (A5) with the commission of crime who has been rightly found guilty by the courts below. On a careful re-appraisal of the evidence available on record, there seems to be no perversity in the view taken by the courts below to warrant interference under Art. 136 of the Constitution. [para 17] [769-E-H] B C D

2.1. An application seeking for transfer of the depositions of witnesses examined in Sessions Case No.99 of 1998 to Sessions Case No. 99 of 2002 filed by the public prosecutor before the trial court, was rejected. The High Court does not appear to have taken note of the rejection order. It has, on the contrary erred in proceeding on the basis that the evidence adduced in the previous trial was evidence in the case against the appellant validly transferred u/s 299, CrPC. [para 19-20] [770-H; 771-A; 772-C-D] E F

2.2. Even assuming that the deposition in terms of s. 299, CrPC had been transferred to the case against the appellant, it may have been open to the accused to argue that such a transfer was not valid in the eyes of law and could not, therefore, be read against him. The High Court ought to have addressed two questions falling for determination before it, viz. (i) whether evidence recorded in Sessions Trial No.99 of 1998 was and/or could be transferred to the case against the appellant and read G H

A **against him and, (ii) if such evidence recorded in Sessions Case No.99 of 1998 was not or could not be transferred, was there any other evidence to support an order of conviction against him. Both these questions having escaped the attention of the High Court, the case**
B **would, call for a remand to the High Court to enable it to hear and dispose of the matter afresh. [para 20-21] [772-D-E, G-H; 773-A]**

2.3. The order passed by the High Court *qua* accused
C **A-6 is set aside and the matter remitted back to the High Court for hearing and disposal afresh in accordance with the law keeping in view the observations made in the judgment. Meanwhile A-6 shall be released on bail. [para 23 and 24] [773-C-D]**

D *Jayendra Vishnu Thakur v. State of Maharashtra and Anr.* **2009 (8) SCR 591 = (2009) 7 SCC 104 – cited.**

Case Law Reference:

2009 (8) SCR 591 cited para 20

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 953 of 2009.

From the Judgment & Order dated 21.01.2009 of the High
F Court of Gujarat at Ahmedabad in Criminal Appeal No. 99 of 2000.

WITH

Criminal Appeal No. 1125 of 2009, 2297 of 2010.

G Haresh Raichura, Shilpa Singh for the Appellant.

H. Wahi, Puja Singh for the Respondent.

The Judgment of the Court was delivered by

H **T.S. THAKUR, J.** 1. These appeals arise out a common

judgment and order dated 21st January, 2009 passed by the High Court of Gujarat at Ahmedabad whereby Criminal Appeal No.244 of 2000 filed by Gautam Kumar @ Sudhir Kumar Manilal and Criminal Appeal No.99 of 2000 filed by Vijay Ranglal Chorasiya against their conviction and sentence of imprisonment for life have been dismissed while Acquittal Appeal No.1326 of 2006 filed by the State against the acquittal of Gautam Kumar Devijibhai (appellant in Criminal Appeal No.1125 of 2009) has been allowed and the said appellant convicted for offences punishable under Sections 364A read with Section 120B IPC and sentenced to undergo imprisonment for life. Conviction and sentences awarded to the appellants Gautam Ramanuj @ Sudhir Kumar Manilal and Vijay Ranglal Chorasiya under Section 364 read with Section 120(B), Sections 341, 342, 343 and 346 read with Section 34 IPC have also been upheld by the High Court with the direction that the sentences shall run concurrently.

2. Manish, examined at the trial as PW13 in Sessions Case No.99 of 1998, was on 15th July, 1997 returning home from his office around 7.30 p.m. in his Maruti car bearing registration No.GJ-1-16A-9992. At the railway bridge near ONGC office, Ankleshwar, a Cielo car overtook and stopped him. Three occupants travelling in the Cielo car came out and assaulted Manish on the pretext that he had ignored their signal while driving over the bridge. He was pushed into the Cielo car and driven away from the spot.

3. At around 8.20 p.m. Manish was asked to make a phone call at his residence which was answered by Maltiben, his mother. Manish simply told her that he will not come home for dinner. Manish was forced to make another phone call at 10 minutes past 10 in the evening in which he was asked by his captors to tell his father Bhupendra Prabhulal Shah (PW3) that he had been abducted. This call was followed by another call made at 10.30 p.m. in which the abductors demanded a ransom of rupees one crore for the safe release of Manish, their

A catch. Bhupendra Prabhulal Shah (PW3) pleaded that he did not have the amount demanded by the abductors, but the latter declined to scale down their demand.

4. On the following day i.e. 16th July, 1997 three more calls B were received from the abductors at the residence of Bhupendra Prabhulal Shah (PW3) for payment of the ransom amount demanded by them. The abductors during these calls are alleged to have brought down the ransom demand from one crore to rupees fifty lakhs only. Bhupendra Prabhulal Shah (PW3) had, in the meantime, informed his brothers C Mahendrabhai Prabhulal Shah (PW11) and Pravinchandra Prabhulal Shah (PW12) about the abduction and the demand of ransom made by the abductors. Information about the incident was also passed on to Mr. Ashish Bhatia (PW34), the then District Superintendent of Police. Based on the information, D the police appears to have made what is described as a "Janva jog" entry marked Exh.174 about the incident on 16th July, 1997 at GIDC, Ankleshwar. The police swung into action and installed a tape recording machine at the victim's residence for surveillance on 16th July, 1997 itself. This was followed by E station entry No.42/97 about the incident made on 17th July, 1997 and a formal FIR registered on 18th July, 1997 at 22.30 hrs. on the basis of a formal complaint made by Bhupendra Prabhulal Shah (PW3) father of the victim.

F 5. Several calls, according to the prosecution, were made at the residence of the victim on 17th July, 1997 asking the father of the victim to come to Ahmedabad Narol Cross Road, with the ransom amount and reach Koba Patiya through Indira Bridge where someone was supposed to give a signal to PW3 G by raising a paper in the hand. Bhupendra Prabhulal Shah (PW3) father of the victim followed the instructions given to him and accordingly reached Koba Circle Cross Road at 9.00 p.m. but found no one raising the paper in his hand even when he waited for the signal till 12.30 at night. Disappointed Bhupendra Prabhulal Shah (PW3) returned from the spot to keep the

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ransom money that he had carried, with one of his relatives in Ahmedabad. He eventually returned to Ankleshwar on 18th July, 1997 in the morning.

6. At about 9.00 a.m. on the 18th July, 1997 Bhupendra Prabhulal Shah (PW3) received another call from the abductors asking him to come to Nilam Hotel on Vadodara Cross Road in Surat, by 12.00 noon. The abductors were told that it was not possible for Bhupender Prabhulal Shah (PW3) to rush to Ahmedabad since the distance between Ahemdabad and Surat was not less than 350 kms. The abductors were unhappy with this reply and threatened Bhupendra Prabhulal Shah with dire consequences. The conversation between the two was tape recorded in the machine installed at the house of the victim. This was followed by another call on 18th July, 1997 itself allegedly made by Vijay Ranglal Chorasiya (A5), appellant in Criminal Appeal No.953 of 2009 from a Bharuch landline telephone No.43533. Since the telephone at the victim's house was under surveillance, a police party immediately rushed to the place where the calling number was installed and found the same to be a STD PCO owned by Vijay Ranglal Chorasiya (A5) but manned by Paresh Kayasth (PW39) his employee who informed the police that the phone call to the house of the victim had been made by none other than the owner Vijay Ranglal Chorasiya (A5). This information led to the apprehension of Chorasiya by Abhay Singh Chudasama (PW27) on 18th July, 1997 giving to the police its first break in the case.

7. Interrogation of Vijay Ranglal Chorasiya (A5) revealed that the abductors were holed up in Divya Apartment in Ahmedabad. A police team accordingly reached Divya Apartment only to find Gautam Kumar @ Sudhir Kumar Manilal (A2) appellant in Criminal Appeal No.2297 of 2010, Kamlesh Barot (A1), Paresh @ Pappu Ranglal Chauhan (A3), Bhavnaben (A8) and Minaben (A9) wife of Pravin in one of the apartments. The police took all of them into custody and recovered two revolvers and some cartridges from the

A apartment. When questioned as to the whereabouts of the victim, Kamlesh Barot (A1) is alleged to have told the police that the victim had been taken by Paresh @ Pappu Ranglal Chauhan (A3) and Pravin Haklo (A4) to a farm owned by Pravin Haklo (A4) situated on the outskirts of Dediyasan village. A B police team headed by Deputy Superintendent of Police Abhaysingh Chudasama (PW27) rushed to the Dediyasan village with Kamlesh Barot (A1) but saw no signs of Pravin Haklo (A4) or Manish the victim. Instead the police found Ramesh Patel (A7) the brother of Pravin Haklo (A4) and C arrested him from the farm house. He informed the police that Pravin Haklo (A4) had taken Manish the victim to Ahmedabad. The police returned to Divya Apartment with Ramesh Patel (A7) in its custody. While at Divya Apartment, a telephone call was received by Gautam Kumar @ Sudhir Kumar Manilal (A2) D appellant in Criminal Appeal No.2297 of 2010 who told the police that the call had been made by Pravin Haklo (A4). At the instance of the police Gautam Kumar Manilal (A2) called Pravin Haklo (A4) to a place nearby Judges Bungalow, Vastrapur, Ahmedabad, where the police arrested Pravin Haklo and recovered from his possession a country made pistol. Arrest E of Pravin Haklo (A4) led the police party to village Naranpura falia, Taluka Patdi from where the police arrested Navthan Jairam Thakore (A11) apart from rescuing and restoring Manish, the victim to his father.

F 8. Further interrogation of the accused by the police led to the arrest of Gautam Kumar Devjibhai Rathod (A6) appellant in Criminal Appeal No.1125 of 2009 who was called to the Divya Apartment along with the Ceilo car allegedly used for the abduction of Manish. Pager No.475625 was also recovered G from his possession on which a message was received on 18th July, 1997 asking him to contact telephone No.43533 belonging to Vijay Ranglal Chorasiya (A5). The police also seized from the possession of Devjibhai Rathod (A6) a carbine besides 58 cartridges and a revolver. Completion of the H investigation led to the filing of a chargesheet before the

jurisdictional Magistrate who committed the case to the Court of Sessions Judge before whom the accused pleaded not guilty and claimed a trial.

9. At the trial, prosecution examined as many as 66 witnesses in support of its case against the accused except accused Gautam Kumar Devijibhai Rathod (A6) who absconded and was tried separately. The accused, however, did not choose to lead any evidence in their defence. The trial Court eventually convicted Gautam Ramanuj (A2), Patesh @ Patulal Ranglal Chauhan (A3), Pravin Haklo (A4), Vijay Ranglal Chorasiya (A5) and Navgan Jairam Thakore (A11) under Section 364-A read with Section 120-B of the IPC and sentenced them to undergo imprisonment for life. Ramesh Patel (A7), Bhavanaben and Minaben (A8 and A9) and Tillu @ Mohammad Rafit Mohamad Siddik (A10) were, however, acquitted by the trial Court. Gautam Devjibhai Rathod (A6) absconding in Session Trial No.99 of 1998, was finally arrested on 2nd September, 2000 and tried in Session Case No.99 of 2002 separately but acquitted by the trial Court of the charges framed against him.

10. Aggrieved by their conviction and the sentence awarded to them Gautam Ramanuj (A2), Patesh @ Patulal Ranglal Chauhan (A3), Pravin Haklo (A4), Vijay Ranglal Chorasiya (A5) and Navgan Jairam Thakore (A11) preferred Criminal Appeals No.244 of 2000, 313 of 2000, 762 of 2000, 99 of 2000 and 610 of 2000 before the High Court of Judicature at Ahmedabad. Acquittal Appeal No.227 of 2000 challenging the acquittal of A-7 to A-10 was also filed by the State against the order passed by the trial Court. So also the State filed Acquittal Appeal No.1326 of 2006 against the order passed by the Trial Court acquitting Gautam Devjibhai Rathod (A6). The High Court has, by the common order impugned in this appeal, upheld the conviction and sentence awarded to the convicted appellants before it namely Gautam Ramanuj (A2), Vijay Ranglal Chorasiya (A5) and Navgan Jairam Thakore (A11)

while it has dismissed Acquittal Appeal No.227 of 2000 challenging the acquittal of A-7 to A-10. By the same order, the High Court has reversed the acquittal of Gautam Devjibhai Rathod (A6) and convicted and sentenced him to undergo imprisonment for life for offences punishable under Section 364-A read with Section 120-B of the Indian Penal Code. The present appeals assail the said order passed by the High Court, as mentioned earlier.

11. We have heard learned counsel for the parties at considerable length who have taken us through the evidence adduced before the trial Court and the judgments delivered by the Courts below. As noticed, in the earlier part of this judgment, only three of the convicted persons are in appeal before us. While Gautam Ramanuj (A2) and Vijay Ranglal Chorasiya (A5) have challenged the concurrent orders passed by the Courts below convicting and sentencing them to imprisonment for life, Gautam Devjibhai Rathod (A6) has in the appeal filed by him assailed the reversal of his acquittal by the High Court. Patesh @ Patulal Ranglal Chauhan (A3), Pravin Haklo (A4) and Navgan Jairam Thakore (A11) have not appealed against their conviction or the sentences awarded to them. We are, therefore, called upon only to examine whether the conviction of Gautam Ramanuj (A2) and Vijay Ranglal Chorasiya (A5) by the Courts below is justified in the light of the evidence adduced at the trial. We shall separately deal with the contentions that were urged by Mr. K.T.S. Tulsi on behalf of Gautam Devjibhai Rathod (A6) whose acquittal by the trial Court stands reversed by the High Court.

12. In so far as the concurrent orders of conviction passed by the Trial Court and the High Court against Gautam Ramanuj (A2) and Vijay Ranglal Chorasiya (A5) are concerned, we have on a careful appraisal of the evidence adduced by the prosecution found no reason much less a compelling one to take a view different from the one taken by the trial Court and the High Court in appeal. We say so because the depositions

of witnesses examined at the trial have proved the guilt of these two accused persons beyond a reasonable doubt. The evidence adduced at the trial connects these two accused persons with the commission of the crime they stand charged with. That evidence is, in our view, reliable and has been rightly accepted by the two Courts below. In particular, we find that Gautam Ramanuj (A2) was one of the persons who had participated in the actual act of abduction of Manish, the victim, and has been identified by him not only in the test identification parade but also in the Court. We see no reason to disbelieve the version given by Manish in his deposition especially because the nature of the incident, the time and place from where the victim was abducted and the fact that the victim had not only been physically assaulted but had spent considerable time with the abductors in the Ceilo car used for the abduction gave to the victim sufficient time to recognise the accused persons and identifying them at the test identification parade conducted subsequently. We need to remember that the incident of the kind with which we are dealing could and does appear to have left an indelible impression upon the victim's mind. We, therefore, have no reason to disbelieve Manish according to whom Gautam Ramanuj (A2) was indeed one of those who had participated in the commission of the crime by abducting Manish in the manner and from the place mentioned by him in his deposition.

13. The statement of the victim apart, the deposition of Mehboob Rusul Shaikh (PW8) who himself is an owner of an STD PCO at Pavagadh Bus Stand, proves that Gautam Ramanuj (A2) had made a call from the telephone booth owned by him. So also the deposition of Vahibhat Abdul Haji (PW9) who also runs an STD PCO at Pavagadh Road has identified Gautam Ramanuj (A2) in the test identification parade and deposed that on 15th July, 1997 a blue/black colour Ceilo car came and some persons came out of the car to make a call. Arvind Kumar (PW-10), an STD PCO owner at Halol-Godhara

A Road has similarly identified Gautam Ramanuj (A2) as the person who had made a call from his booth.

14. We may also refer to the depositions of Rajnikant Patel (PW-16) and Masumali Rahimbhai Kadiwala (PW-17), both B owners of STD PCOs who have testified that on 16th and 17th July, 1997 calls were made from their PCOs on a number that happens to be the residential telephone number registered in the name of the victim's father. There is, in the light of these depositions and other evidence discussed by the trial Court and the High Court at some length, no doubt left in our mind that C Gautam Ramanuj (A2) was indeed one of the persons who was involved in the act of abduction of the victim for ransom in conspiracy with the remaining accused persons found guilty by the Courts below. We, accordingly see no reason to interfere with the judgments and orders passed by the Courts below D holding Gautam Ramanuj (A2) guilty under Section 364-A read with Section 120-B of the Indian Penal Code nor do we see any reason to interfere with the sentence of life imprisonment awarded to him.

E 15. That leaves us with Vijay Ranglal Chorasiya (A5) who too has been found guilty by both the Courts below and sentenced to undergo imprisonment for life for the offence punishable under Section 364-A read with Section 120-B of the Indian Penal Code. The trial Court as also the High Court have F both carefully appraised the evidence adduced by the prosecution to connect this accused with the incident of abduction and to prove the charge framed against him. Apart from other evidence adduced at the trial, deposition of Bhupendrabhai Prabhulal Shah (PW3), father of the victim has G also been relied upon by the Courts below. Deposition of Bhupendrabhai Prabhulal Shah (PW3) proves that Manish was abducted and ransom calls started for his release. The witness also proves the fact that landline telephone No.55167 was used to record the conversation between him and the abductors from time to time. The witness also identifies the voice of Vijay

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Ranglal Chorasiya (A5) as one of the callers who had demanded ransom for release of Manish.

16. Depositions of Mahendralal Prabhulal Shah (PW-11) and Pravinchandra Prabhulal Shah (PW-12) who happen to be uncles of the victim-Manish also support the prosecution case in the above respects. More importantly they have identified the voice in the tape recorded machines set up by the police for the surveillance of the residential telephone number of the victim's family. Also important in this connection is the deposition of Atul Kumar Sharma (PW-28), a Divisional Engineer who stated that Vijay Ranglal Chorasiya (A5) had initially been allotted telephone No.33149, who had then sought transfer of the said telephone number and had been allotted telephone No.43533. Reference may also be made to the deposition of Chandra Kumar Mahendra Kumar (PW29) Scientific Officer of the CBI who had examined the Voice Spectrography of the caller to prove that tape recorded voice was that of Vijay Ranglal Chorasiya (A5).

17. It is fairly well established by the evidence on record that the police got its first break from the information provided by Vijay Ranglal Chorasiya (A5) that led to the arrest of the remaining accused persons and the seizure of arms and ammunitions from them, apart from discovery of the place from where Manish was eventually rescued from. But for the information given by Vijay Ranglal Chorasiya (A5), there was no way the police could possibly reach Deviya Apartments nor could they have eventually caught up with the remaining abductors who were holding the victim a captive for ransom at a place unknown to everyone except to the abductors. The deposition of the witnesses, thus, connects the appellant Vijay Ranglal Chorasiya (A5) with the commission of crime who has been rightly found guilty by the Courts below. On a careful re-appraisal of the evidence available on record, we see no perversity in the view taken by the Courts below to warrant interference under Article 136 of the Constitution.

A 18. That leaves us with the appeal filed by Gautam Devjibhai Rathod (A6). This accused-appellant, as mentioned earlier, had been acquitted by the trial Court. The reversal of the acquittal by the High Court came under criticism in this appeal as according to Mr. K.T.S. Tulsi, learned Senior Counsel B appearing for the said appellant, the High Court had committed a palpable error in reading against the said accused person's evidence that had been recorded in the trial Court against the remaining accused persons. Mr. Tulsi submitted that the appellant-Gautam Devjibhai Rathod (A6) was no doubt C absconding when Session Trial No.99 of 1998 was conducted but the transfer of the depositions of some of the witnesses to Session Trial No.99 of 2002 against the appellant-Gautam Devjibhai Rathod (A6) was not legally permissible. At any rate the transfer of the depositions was not in accordance with the D provisions of Section 299 of the Code of Criminal Procedure, 1973. It was also contended that the High Court had while finding the appellant guilty relied upon certain depositions which had not been recorded or validly transferred under Section 299 and that independent of the said evidence which according to E the learned counsel could not be treated as evidence against the appellant, there was no other evidence on the basis whereof the High Court may have recorded a finding of guilt against the appellant. It was also contended by Mr. Tulsi that the trial Court had specifically rejected an application under Section 299 filed by the public prosecutor seeking transfer of the depositions F recorded in the Session Case No.99 of 2002 but the High Court had remained oblivious of the said rejection order and proceeded on an erroneous assumption that the evidence recorded in Session Case No.99 of 1998 was admissible and stood validly transferred for being read as evidence in the case G against the appellant.

19. We find merit in the submission made by the learned Counsel. An application seeking for transfer of the depositions of witnesses examined in Sessions Case No.99 of 1998 to H Sessions Case No. 99 of 2002 was admittedly filed by the

public prosecutor before the trial Court. That application was, however, rejected by the said Court by an order dated 28th March, 2003. The trial Court had while doing so observed: A

"Ordinarily in any criminal case accused has right to cross-examine witnesses of prosecution and this right should be given as per principle of natural justice. B

But Learned Public Prosecutor has argued that if the accused has waived this right by his conduct, he cannot cross examine them now.

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...this principle has been elaborated and as per new Section 299 of Cr.P.C. this provision is exception to rule that all evidence should be taken in the presence of accused. D

The principle behind this exception is that normally court insists on best evidence but there are possibilities of evidence being destroyed and therefore the present exception is carved out. E

The authority further states that if any person has by his conduct chosen that evidence may be taken in his absence, then later he cannot say that as per principle of natural justice evidence should have been taken in his presence. F

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In the present case before us, against the accused in session's case No.99 of 1998 there is no order that evidence be recorded against accused in his absence U/sec. 299 of Cr.P.C. G

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Thus, in above circumstances, the evidence which H

A *is recorded in Sessions Case No.99 of 1998 cannot be taken as evidence against the present accused and without analyzing the said evidence and without giving opportunity of cross-examination to accused. Thus arguments of Ld. PP cannot be accepted.*

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... And therefore I believe that application of the prosecution is required to be rejected."

C 20. The High Court does not appear to have taken note of the above rejection order. It has, on the contrary, proceeded on the basis that the evidence adduced in the previous trial was evidence in the case against the appellant validly transferred under Section 299 of the Code of Criminal Procedure. That D apart even assuming that the deposition in terms of Section 299 of the Code of Criminal Procedure had been transferred to the case against the appellant, it may have been open to the petitioners to argue that such a transfer was not valid in the eyes of law and could not, therefore, be read against him. E Reliance before us was placed upon the decision of this Court in *Jayendra Vishnu Thakur v. State of Maharashtra and Anr.* (2009) 7 SCC 104 which deals with some of these aspects.

21. The High Court has, it is evident from the impugned order, remained oblivious of the above aspects and proceeded F to appreciate the evidence adduced in the previous Sessions Case No.99 of 1998 as though the said evidence had been adduced in the case against the appellant. In doing so, the High Court committed an error. The High Court ought to have addressed two questions falling for determination before it, viz. G (i) whether evidence recorded in Sessions Trial No.99 of 1998 was and/or could be transferred to the case against the appellant and read against him and, (ii) if such evidence recorded in Sessions Case No.99 of 1998 was not or could not be transferred, was there any other evidence to support an H order of conviction against him. Both these questions having

escaped the attention of the High Court, the case would, in our opinion, call for a remand to the High Court to enable it to hear and dispose of the matter afresh.

22. In the result, we dismiss Criminal Appeal No.953 of 2009 filed by Vijay Ranglal Chorasiya (A5) and Criminal Appeal No.2297 of 2010 filed by Gautam Kumar (A2).

23. Criminal Appeal No.1125 of 2009 filed by Gautam Devjibhai Rathod (A6) is, however, allowed, the order passed by the High Court set aside *qua* the said accused and the matter remitted back to the High Court for a fresh hearing and disposal in accordance with the law keeping in view the observations made above.

24. Since we have set aside the order passed against the appellant Gautam Devjibhai Rathod (A6), and since the acquittal appeal has to be heard and disposed of afresh, we direct that the said appellant shall be released from custody on furnishing bail bonds in a sum of Rs.50,000/- with two sureties in the like amount to the satisfaction of the Registrar of the High Court of Gujarat at Ahmedabad unless of course he is required in connection with any other case. The High Court would do well to hear and dispose of the appeal at an early date as the matter is fairly old and has remained pending for a long time.

Rajendra Prasad — Appeals disposed of.