



**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

**BEFORE
HON'BLE SHRI JUSTICE VIVEK AGARWAL
&
HON'BLE SHRI JUSTICE DEVNARAYAN MISHRA**

CRIMINAL APPEAL No. 2279/2015

***Pradip @ Rajeev Shrivastava
versus
State of Madhya Pradesh***

APPEARANCE

Shri Vishal Vincent Rajendra Daniel, Amicus Curiae for appellant.
Shri Manas Mani Verma, Government Advocate for the State.

CRIMINAL APPEAL No. 2537/2015

***Sudhir @ Rajsingh Bhadoria & Another
versus
State of Madhya Pradesh***

APPEARANCE

Shri Surendra Singh, Senior Advocate assisted by Shri Kapil Pathak,
Advocate for appellants.
Shri Manas Mani Verma, Government Advocate for the State.

CRIMINAL APPEAL No. 2799/2015

Ripusudan @ Rajesh Goutam



versus
State of Madhya Pradesh

APPEARANCE

Shri Vishal Vincent Rajendra Daniel, Amicus Curiae for appellant.
Shri Manas Mani Verma, Government Advocate for the State.

CRIMINAL APPEAL No. 6959/2019

Dhananjay @ Dinesh Singh @ Arun
versus
State of Madhya Pradesh

APPEARANCE

Appellant Arun Tiwari is present in person.
Shri Manas Mani Verma, Government Advocate for the State.

CRIMINAL APPEAL No. 3410/2023

Mohammad Inam @ Haji
versus
State of Madhya Pradesh

APPEARANCE

Shri Rishabh Kumar Kaurav, Advocate for appellant.
Shri Manas Mani Verma, Government Advocate for the State.

Judgment Reserved On : 25.7.2025
Judgment Pronounced On : 10.9.2025



Criminal Appeal No.2279/2015, Criminal Appeal No.2537/2015 and Criminal Appeal No.2799/2015 under Section 374(2) of the Code of Criminal Procedure, 1973 (for short “Cr.P.C”) are filed being aggrieved of judgment dated 29.7.2015 passed by learned 1st Additional Sessions Judge, Khandwa in Sessions Trial No.199/2013 (First Supplementary) convicting & sentencing the appellants, namely, Sudhir @ Rajsingh Bhadoria, Onkarsingh @ Setthi, Pradip @ Rajeev Shrivastava and Ripusudan @ Rajesh Goutam as mentioned in the table below:-

For Appellant No.1 Sudhir @ Rajsingh Bhadoria in Criminal Appeal No. 2537/2015:-

Conviction		Sentence		
Section	Act	Imprisonment	Fine if deposited	Imprisonment in lieu of fine
420	IPC	RI for 5 years	Rs.10,000/-	RI for 3 months
364-A	IPC	RI for life	Rs.50,000/-	RI for 1 year
120B	IPC	RI for life	Rs.50,000/-	RI for 1 year
328	IPC	RI for 7 years	Rs.15,000/-	RI for 6 months
473	IPC	RI for 5 years	Rs.10,000/-	RI for 3 months
171	IPC	RI for 2 months	Rs.100/-	RI for 10 days
5	Explosive Substances Act, 1908	RI for 7 years	Rs.15,000/-	RI for 6 months
25(1-B)(a)	Indian Arms Act, 1959	RI for 3 years	Rs.5000/-	RI for 1 month

For Appellant No.2 Onkarsingh @ Setthi in Criminal Appeal No.2537/2015:-

Conviction	Sentence
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Section	Act	Imprisonment	Fine if deposited	Imprisonment in lieu of fine
420	IPC	RI for 5 years	Rs.10,000/-	RI for 3 months
364-A	IPC	RI for life	Rs.50,000/-	RI for 1 year
120B	IPC	RI for life	Rs.50,000/-	RI for 1 year
328	IPC	RI for 7 years	Rs.15,000/-	RI for 6 months
473	IPC	RI for 5 years	Rs.10,000/-	RI for 3 months
5	Explosive Substances Act, 1908	RI for 7 years	Rs.15,000/-	RI for 6 months
25(1-B)(a)	Indian Arms Act, 1959	RI for 3 years	Rs.5000/-	RI for 1 month

**For Appellant Pradip @ Rajeev Shrivastava in Criminal Appeal
No.2279/2015:-**

Conviction		Sentence		
Section	Act	Imprisonment	Fine if deposited	Imprisonment in lieu of fine
420	IPC	RI for 5 years	Rs.10,000/-	RI for 3 months
364-A	IPC	RI for life	Rs.50,000/-	RI for 1 year
120-B	IPC	RI for life	Rs.50,000/-	RI for 1 year
328	IPC	RI for 7 years	Rs.15,000/-	RI for 6 months

**For Appellant Ripusudan @ Rajesh Goutam in Criminal Appeal
No.2799/2015:-**

Conviction		Sentence		
Section	Act	Imprisonment	Fine if deposited	Imprisonment in lieu of fine
364-A read with Section 120-B	IPC	RI for life	Rs.50,000/-	RI for 1 year
25(1-B)(a)	Indian	RI for 2 years	Rs.5000/-	RI for 1 month



	Arms Act, 1959			
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2. Criminal Appeal No.3410/2023 & Criminal Appeal No.6959/2019 under Section 374(2) of the Cr.P.C are filed being aggrieved of judgment dated 27.6.2019 passed by learned 5th Additional Sessions Judge, Khandwa in Sessions Trial No.199/2013 convicting & sentencing the appellants, namely, Mohammad Inam @ Haji and Dhananjay @ Dinesh Singh @ Arun as mentioned in the table below:-

For Appellant Dhananjay @ Dinesh Singh @ Arun in Criminal Appeal No.6959/2019:-

Conviction		Sentence		
Section	Act	Imprisonment	Fine if deposited	Imprisonment in lieu of fine
420	IPC	R.I. for 5 years	Rs.10,000/-	R.I. for 3 months
364-A/149	IPC	R.I. for life	Rs.50,000/-	R.I. for 1 year
120-B	IPC	R.I. for life	Rs.50,000/-	R.I. for 1 year
328/149	IPC	R.I. for 7 years	Rs.10,000/-	R.I. for 6 months

For appellant Mohammad Inam @ Haji in Criminal Appeal No.3410/2023:-

Conviction		Sentence		
Section	Act	Imprisonment	Fine if deposited	Imprisonment in lieu of fine
364-A	IPC	R.I. for life	Rs.50,000/-	R.I. for 1 year
420	IPC	R.I. for 5 years	Rs.10,000/-	R.I. for 3 months
120-B	IPC	R.I. for life	Rs.50,000/-	R.I. for 1 year



328	IPC	R.I. for 7 years	Rs.15,000/-	R.I. for 6 months
473	IPC	R.I. for 5 years	Rs.10,000/-	R.I. for 3 months
5	Explosive Substances Act, 1908	R.I. for 7 years	Rs.15,000/-	R.I. for 6 months
25(1-B)(a)	Indian Arms Act, 1959	R.I. for 3 years	Rs.5000/-	R.I. for 1 month.

3. Accused Sajan Singh Chouhan has been convicted for the offence under Section 25(1-B)(b) of the Arms Act, 1959 and sentenced to undergo rigorous imprisonment for one year with fine of Rs.2,000/- and in default of payment of fine to undergo additional rigorous imprisonment for fifteen days but he has not filed any appeal before this Court. Accused Pankaj Kharat @ Fauzi has been acquitted by the learned Trial Court from the charges of Sections 420, 364A, 120B, 328 of the I.P.C. Similarly, learned Trial Court noted that as the prosecution has failed to prove its case against the accused Guddu @ Iliyas, therefore, recorded the finding of acquittal in his favour from the charges under Sections 420, 364A, 120B and 328 of the I.P.C.

4. The appellant Arun Tiwari in person and learned counsels for the appellants submit that the prosecution case in short is that on 24.8.2013 at about 5:00 PM, Rajesh Jain (PW-1) was abducted by the accused persons, namely, Sudhir @ Rajsingh Bhadoria, Pradip @ Rajeev Shrivastava, Mohammad Inam @



Haji and Onkarsingh @ Setthi in a white car from the bypass near Radisson Hotel at Indore. Once in the car, ransom was demanded from Rajesh Jain (PW-1) and thereafter on telephone from Shyam Soni (PW-4) and Rajeev Jain (PW-2) respectively. Rajesh Jain (PW-1) was rendered unconscious by administering some drug to him. He remained unconscious throughout his captivity. Shyam Soni (PW-4) was at Indore when he received the demand for ransom over the phone. He alongwith Santosh Jain (PW-3) went to the Police Station Vijay Nagar, Indore and informed the police. The police accompanied by these two witnesses made a search for Rajesh Jain (PW-1) though unsuccessfully. Shyam Soni (PW-4) though spent night at Police Station Vijay Nagar, Indore but no FIR was lodged regarding abduction for ransom. No police officer from police station at Indore is examined at the trial to corroborate the testimony of Santosh Jain (PW-3) and Shyam Soni (PW.4).

5. Rajeev Jain (PW-2) reported the matter at Police Station Kotwali, District Khandwa and lodged the FIR vide Exhibit P/4C. There is no mention of the demand of any ransom being made from Rajeev Jain (PW-2) in this FIR Exhibit P/4C. In the FIR lodged by Rajeev Jain (PW-2) on 24.8.2013 at about 6:30 PM for the offence under Section 364A of the IPC pertaining to Crime No.464/2013, it is mentioned that some unknown persons had abducted his



brother. It is mentioned in the FIR (Exhibit P/4C) that they are in jewelry business. They are three brothers living in a joint family. The author of FIR Rajeev Jain (PW-2) was at his shop when at about 6:30 PM, a phone call was received on this landline number 2225927 and an unknown person informed him that his brother Rajesh Jain (PW-1) was kidnapped and asked him to not to telephone police. The unknown caller asked him to wait for another call. Before Rajeev Jain (PW-2) could ask anything, the caller had disconnected the call. His elder brother Rajesh Jain (PW-1) had gone to Indore in his Swift Car MP09-CC-3501 alongwith Santosh Prem Chand Jain, Shyam Soni, Rajesh Parikh. Rajeev Jain (PW.2) called Rajesh Jain (PW-1) on his mobile number 9826047721 but that phone was switched off. Rajeev Jain (PW-2) had informed Rajneesh Jain, who in turn called Santosh Jain and Santosh Jain informed them that he too had received intimation of kidnapping of Rajesh Jain (PW.1). Rajeev Jain (PW.2) contacted Dhananjay @ Dinesh Singh @ Arun, who had approached him at Khandwa in connection with a land deal and he too informed him about the kidnapping of Rajesh Jain (PW.1) and asked him to keep a sum of Rs.5,00,00,000/- ready as ransom otherwise serious consequences will be required to be faced. He had given intimation to his brothers and relatives at Indore but could not trace his brother Rajesh Jain (PW.1).



6. Firstly, there is no evidence of Rajeev Jain (PW-2) contacting Dhananjay @ Dinesh Singh @ Arun and Dhananjay @ Dinesh Singh @ Arun demanding any ransom from him. Secondly, the whole prosecution case has several weak links pointing out towards the innocence of the appellants but their conviction is recorded only on the basis of surmises and conjectures. As per the prosecution case, Rajesh Jain (PW-1) after abduction was taken to Flat No.1106, Sector-3, at Faridabad (Haryana). A team headed by ACP Rajesh Kumar Chawra (PW.26), Inspector Narendra Pal (PW.23) both from the Crime Branch at Faridabad, Vijay Singh Paraste (PW.30), ASI Kotwali, Khandwa and about 12 other police personnel reached Flat No.1106 at about 4:00 AM on 28.8.2013. A white Innova Car was parked outside the building. The team noticed that at about 6:30 AM on 28.8.2013, the accused Sudhir Bhadoria was seen coming from the building towards the car. He was apprehended by the police. Subsequently, the police entered Flat No.1106 and found Rajesh Jain (PW.1) in an unconscious state in the custody of Pradip @ Rajeev Shrivastava, Mohammad Inam @ Haji and Onkarsingh @ Setthi.

7. The accused Sudhir Bhadoria was arrested. His memorandum Exhibit P/28 was drawn and vide Exhibits P/44 to P/60, the seizure of arms, ammunition and other articles were made. The accused Pradip @ Rajeev



Shrivastava gave his memorandum vide Exhibit P/29 and certain articles were seized vide Exhibits P/62 to P/71. The accused Onkarsingh @ Setthi gave his memorandum vide Exhibit P/30 and certain articles were seized vide Exhibits P/81 to P/87. Mohammad Inam @ Haji gave his memorandum vide Exhibit P/31.

8. On 28.8.2013, transit remand was obtained from the Court of learned Judicial Magistrate First Class, Faridabad and the arrested accused persons were brought to Khandwa where they were incarcerated at Police Station Kotwali, District Khandwa. Rajesh Jain (PW-1) and other witnesses were summoned to the Police Station Kotwali, District Khandwa where their case diary statements were recorded. The accused persons were produced before the Court of learned Chief Judicial Magistrate, Khandwa on 31.8.2013 and remanded to the judicial custody. On 18.9.2013, a Test Identification Parade vide Exhibit P/2 was conducted by the Naib Tahsildar Ms.Mala Ahirwar (PW-13) in which the accused persons were identified by Rajesh Jain (PW-1).

9. The appellant Arun Tiwari, one of the convicted accused persons, submits that as per prosecution case, Rajesh Jain (PW-1) was called to Radisson Hotel, Indore at about 5:00 PM to finalize draft sale deed. According to the prosecution, he met Dhananjay and Pradip @ Rajeev Shrivastava. Thereafter, he was taken to the bypass road to meet the boss. It was informed that the boss is



sitting in the car. They reached bypass where two persons were standing outside the car. Rajesh Jain (PW-1) went inside the car. Dhananjay took keys of the car of Rajesh Jain (PW-1) and it is alleged that he fled with the car. Rajeev Jain (PW-2) picked up landline phone and from him ransom was demanded. Rajeev Jain (PW-2) states in the FIR that he had only received a call with regard to abduction of Rajesh Jain (PW-1) but no ransom was demanded. Thus, there is contradiction in the prosecution story. Thereafter, it is mentioned in the FIR that Santosh Jain (PW-3) called his brother Rajesh Jain (PW-1). Santosh Jain (PW-3) gave his phone to Shyam Soni (PW-4) and then the demand was made for ransom. It is submitted that Rajeev Jain (PW-2) lodged FIR at Police Station Kotwali, District Khandwa. Sudhir @ Rajsingh Bhadoria, Pradip @ Rajeev Shrivastava, Onkarsingh @ Setthi, Mohammad Inam @ Haji were subjected to the Test Identification Parade and they were rightly identified by the concerned witnesses. As far as Dhananjay @ Dinesh Singh @ Arun is concerned, his Test Identification Parade is Exhibit P/1, which was carried out on 4.7.2016 at 4:00 PM in District Jail Khandwa in presence of the Naib Tahsildar Ms.Mala Ahirwar where Rajesh Jain (PW-1), Santosh Jain (PW-3), Manoj Jain, Rajesh Parikh, Rajendra S/o.Ganpat Rao and Pramod S/o.Jogendra Puri identified him correctly.



Similarly, he was also identified by Hukum S/o.Diggilala, Sandeep S/o.Santosh, Shyam S/o.Chhogalal and Pappu @ Pankaj S/o.Prahlad.

10. Rajesh Jain (PW-1) was recovered from the second floor of the house at Faridabad. Shri Krishan (PW-7) owns the building. Shri Krishan (PW-7) admitted knowing Ripusudan @ Rajesh Goutam as he had taken his Flat No.1106 at Sector-3, Huda Colony, Ballabhgarh, Faridabad since 2013 and stated that the house was rented out for a sum of Rs.5,000/- per month and Ripusudan @ Rajesh Goutam was residing with his wife Sonia and daughter Nitika. On the lower floor of the house, the landlord Shri Krishan was residing with his family and on the third floor, Muniraj Nagar was residing with his family.

11. The appellant Arun Tiwari submits that he was not present at Faridabad. He was not arrested at Sector-3, Faridabad. Sudhir Bhadoria was shown to the witnesses. There was no demand for ransom and at most the offence will be one under Section 365 of the I.P.C.

12. Appellant-Arun Tiwari submits that learned Additional Sessions Judge convicted the appellant without appreciating the evidentiary value of the testimony of various witnesses available on record. Decision is “Sub-silentio” i.e. without considering the relevant arguments and the relevant facts in issue.



13. It is submitted that prosecution allegation in the case in hand is that appellant being main accused had lured Rajesh Jain in a fictitious act of land dealing so to call him to Indore and thereafter acting as a member of the Larger Gang, he handed over Rajesh Jain to the gang of the co-accused so to facilitate abduction and ransom.

14. It is submitted that allegation on co-accused is of demanding ransom after abduction, but Arun Tiwari remained absconding since beginning in the case.

15. It is submitted that police personnel framed a story that the appellant Arun Tiwari was absconding and, therefore, constituted a team to visit his home town. He was declared to be absconding and a *Farari Panchnama* was prepared. Proceedings under Sections 82 and 83 of the Cr.P.C were sought to be initiated against the appellant. When the appellant was arrested in another case in the year 2016, then he was served with the warrant at District Jail, Varanasi. On 30th June, 2016, he was formerly arrested and charge-sheet was filed.

16. It is submitted that this theory developed by the police that the appellant was absconding and was not known to them, is not correct. The appellant Arun Tiwari submits that in fact his identity was known to the police since 2013 and in fact he was working as a police agent. He had all the



knowledge of the facts of the case. It is submitted that Rajesh Jain was neither abducted nor any ransom was demanded. A fake story of ransom demand and abduction was put forth to frame the accused persons. It is argued that the appellant was never absconding and on this aspect, attention is drawn towards the cross-examination of Nathuram Dubey (PW-10), Deepak Nagle (PW-20) & Vijay Singh Paraste (PW-22).

17. It is pointed out that Nathuram Dubey (PW-10), ASI, when cross-examined, admitted that he cannot state as to on which date and at what time, they had left Indore for Faridabad. This witness admitted that whenever they leave for another district, they take written orders from the senior police officials. He stated that originally the police team was directed to proceed to Uttar Pradesh, but, on way, they got instructions to proceed towards Faridabad. This witness further stated that when they had reached Faridabad between the night of 27-28th August, then whether there is any documentary evidence of reporting their arrival at Faridabad Police Station or not, cannot be said by him. This witness stated that they had reached the place of the incident i.e. house at Sector No.3 at Faridabad at about 08:45 a.m. and had made their entry in the house after 10-15 minutes from where they recovered Rajesh. This witness further stated that Rajesh Jain was identified by the local police of Khandwa. It is pointed out that



this witness admitted that Rajesh was not taken by them to the hospital. He further stated that the team, which had gone to Banaras, was led by him. At Banaras Cantt. Police Station, the SHO had given intimation about Arun Tiwari.

18. Deepak Nagle, S.I. (PW-20) admitted that when he received the case diary in 2015 at the time of filing of the supplementary charge-sheet in relation to accused Ramesh @ Chini, at that time, the name of Arun Tiwari was recorded under "*Farari*". There was no photograph or video footage of Arun Tiwari. Ramesh @ Chini had not given the name and address of Arun Tiwari. This witness further admitted that after receiving intimation from the informant that the appellant Arun Tiwari was at Banaras, they had not gone to Banaras but had sent ASI Baria to Banaras. ASI Baria had prepared Farari Panchnama and had collected information in regard to Arun Tiwari. This witness admitted that no statement of this witness was obtained prior to his formal arrest.

19. In paragraph 10 of his cross-examination, Shri Deepak Nagle (PW-20) admitted that prior to filing of the charge-sheet, no information was collected in regard to the business transaction. He further admitted that during interrogation post arrest, no new fact was discovered, which was not already mentioned in the case diary. This witness denied a suggestion that the appellant Arun Tiwari was planted to crush Hazi Imam and Bhadoria Gang six months



prior to the incident and this fact was known to the whole of the Crime Branch. Thus, it is submitted that complete Crime Branch was knowing this fact that the appellant was planted by the police to crush Bhadoriya and Hazi Imam Gang.

20. In paragraph 31 of his cross-examination, Vijay Singh Paraste (PW-22) admitted that he does not remember as to when the house at Faridabad was raided, whether ASI Nathuram Dubey was with him or not. He also admitted that Rajesh Jain was not taken to a Government Hospital though he was unconscious because his relatives arrived and had asked to take him to Sarvodaya Hospital. This witness admitted that on Ex.P-14C, which is a paper showing emergency consultation dated 28.08.2013, the time is mentioned as 11:30, whereas in police information for MLC, the time is mentioned as 12:14. This witness admitted overwriting and correction on Ex.P-3C, Ex.P-21C, Ex.P-22C, Ex.P-23C, Ex.P-26C, Ex.P-31C and Ex.P-32C as well as on Ex.P-34C. This witness admitted that he cannot give reason for such overwriting. This witness also admitted that in seizure memo Ex.P-30C, the time is mentioned as 01:40 and there is no overwriting. This witness further admitted that he is unable to say as to where he had gone from the place of the incident. This witness also admitted that despite statement of Aashu Bakshi as contained in Ex.D-17 in which he has mentioned that he had received phone from some T.I. and the statements of Manoj Pareek as



contained in Ex.D-18, which states that they were going to Vijay Nagar Police Station Indore so also the statements of Pramod Kori as contained in Ex.D-19 when Rajesh Pareek had informed him that they were going to Vijay Nagar Police Station for lodging a report, this witness had not *collected* any information as to whether any FIR was registered at Indore or not. This witness also admitted that he had neither mentioned *Rojnamacha Sanha* Number in FIR Ex.P-4 nor produced it before the Court. This witness further admitted that he cannot say as to why *Rojnamacha Sanha* was not enclosed along with the charge-sheet. In paragraph 86, this witness stated that everybody was having knowledge that abduction had taken place from Indore and when relatives of the abductee had approached the Police Station Kotwali, District Khandwa to lodge the FIR, then they had stated that abduction had taken place from Indore saying that they had received a call from an unknown person on their landline number informing them about abduction.

21. This witness further admitted in Paragraph 87 that he had recorded statements of the ASI Bharat Singh under Section 161 Cr.P.C. in his own handwriting. That statement is Ex.D-21 in which it is mentioned that abduction had taken place from Khandwa district on 24.08.2013. This witness admitted that witness ASI Nathuram Dubey (PW-10), in his police statements Ex.D-22,



mentioned that abduction had taken place from Khandwa. Similar statements were given by Sub Inspector Narendra Kumar vide Ex.D-23 and Inspector Rajesh Chawda vide Ex.D-24. This witness also admitted that in the case and discharge summary of Sarvodaya Hospital Ex.P-14C on 'A' to 'A' part, it is mentioned that abduction had taken place at Khandwa. Even in the MLC sent to Sarvodaya Hospital, it is mentioned that abduction had taken place on 24.08.2013.

22. In paragraph 96, Vijay Singh Paraste (PW-22) admitted that he had not prepared any spot map on the identification of the abductee. It is pointed out that Vijay Singh Paraste (PW-22) admitted that no enquiry was made to ascertain that the land in regard to which so called deal was to be made for which Rajesh Jain was called to Indore, was belonging to Rajesh Jain. This witness only stated that relatives of Rajesh Jain had informed him that Rajesh Jain was a partner. When this witness was confronted, he stated that he had not collected electronic evidence like CDR etc. so to suppress his misdeeds. This witness after saying that he is not a specialist admitted that while filing the supplementary charge-sheet, he had collected the CDR details.

23. Vijay Singh Paraste (PW-22) further admitted that while making seizure memo of a mobile Titanium Carbon S5 vide Ex.P-33-C, seizure of which



was prepared by this witness, he had not mentioned as to mobile belongs to whom. After having said that he had never visited Banaras, this witness admitted that he had produced a NHA Card at Banaras on 30.08.2013 in front of a Journalist. Thus, it is pointed out that neither the *Farari Panchnama* is properly prepared because the police personnel never visited the village of this accused nor seizure memo was properly prepared. Thus, it is submitted that he has been made an accused in an arbitrary and illegal manner and there is plethora of evidence to show that no offence under Section 364-A of IPC is made out.

24. It is submitted that learned Additional Sessions Judge committed grave mistake in evaluating the evidence available on record and correlate it with the demand of ransom.

25. It is pointed out that first story of ransom demand is introduced to the FIR. This story is though supported by informant Rajeev Jain (PW-2), Rajneesh Jain (PW-4) and R.C. Bhakhar, Special officer (PW-17) but it is contradicted by Santosh Kumar Jain (PW-3), inasmuch as, in the FIR Ex.P-4 it is mentioned that author of the FIR Rajeev Jain was at the shop when at about 06:30 he received a phone call on his landline number then an unknown person informed him that his brother was kidnapped and he should not call the police personnel but wait for the next call. It is mentioned in the FIR that thereafter, the phone call was



disconnected. He called his brother Santosh Jain, who informed that he too had received a call in regard to kidnapping of Rajesh and then Rajeev contacted Dhananjay Solanki, who informed them that Rajesh was kidnapped and they should keep a sum of Rs.5 crores ready as ransom otherwise they will have to face consequences.

26. It is pointed out that Santosh Kumar Jain (PW-3) in paragraph 8 stated that after reaching Sayaji Hotel, Shyam Soni had called on the number of the accused when the person on the other side stated that wait for 10 minutes he is coming. When he did not reach within 10 minutes then Shyam Soni had again called him, then accused stated that he is coming but did not reach there for 20-25 minutes. Then Santosh Kumar Jain (PW-3) had called Rajesh Jain, who was very upset and stated that he has been surrounded and asked them to come soon. Thereafter, again when they had called Rajesh Jain then somebody else took the call and the voice was that of accused Arun Tiwari but whatever he said, could not be understood by Santosh Kumar Jain (PW-3), therefore, he had given his phone to Shyam Soni. Shyam Soni after attending the call stated that Rajesh was abducted and a demand of Rs.5 crores was being made.

27. The appellant Arun Tiwari submits that as per prosecution's own case, he was not in the car. Prosecution's case, in itself, is that after taking Rajesh



Jain to the main road and introducing him to the other persons, Rajesh Jain was taken inside the car of other accused persons then Dhananjay had taken keys of the car of Rajesh Jain and the allegation is that he had fled away. Thus, there was no occasion for these witnesses to say that when they received the call from Rajesh Jain or when they had a talk with Rajesh Jain, he was very upset and asked them to reach home and then when mobile was handed over to Shyam Soni, the appellant Dhananjay @ Dinesh Singh @ Arun demanded any ransom.

28. It is pointed out that there is no voice test nor collection of CDR etc. to support aforesaid contention. It is submitted that even theory of Dhananjay @ Arun Tiwari abducting is absurd, inasmuch as, the FIR is against unknown persons, whereas Dhananjay @ Dinesh Singh @ Arun was allegedly known to the complainant party.

29. The appellant Arun Tiwari submits that prosecution has no benefit of Section 6 of the Evidence Act which is exception to hearsay evidence. It is pointed out that when first story of ransom demand could not be substantiated in the initial investigation, then after two days of recovery of Rajesh Jain, another story of demand of ransom was introduced. It is pointed out that Rajeev Jain (PW-2), author of FIR, improvised his story. It is, thus, submitted that the



prosecution allowed Rajeev Jain (PW-2) and Rajneesh Jain (PW-4) to make contradictory statements and demolish its own story.

30. Reliance is placed on the judgment of ***Padmati Venkata Sundara Rao Vs. State of Andhra Pradesh, 2006 Cr.L.J 2168***, wherein it is held that *in the case the informant contradicted the contents of Ex.P-1 and it was not challenged by prosecution. Therefore, FIR has no value and the prosecution cannot rely on the contents of FIR, so also on the evidence of PW-2.*

31. It is pointed out that Rajeev Jain (PW-2) in para-17 of his cross examination admitted his police case diary statement to be true. Thus, he contradicted the story of Rajesh Kumar Jain (PW-1) that “*Guddu-Guddu* was heard on the landline number and ransom was demanded on the same phone call.” In fact, author of the FIR, himself, admitted that no demand of ransom was made to him and after receiving intimation in regard to abduction, the phone call was disconnected.

32. Thus, it is submitted that theory of demand of ransom is not established. It is pointed out that a third story was introduced at the instance of Santosh Kumar Jain (PW-3) saying that he had made two phone calls on the mobile of Rajesh Jain (PW-1) and the first phone call was received by Rajesh Jain (PW-1) when Rajesh Jain had informed Santosh Kumar Jain (PW-3) that he



was stuck in a grave situation and asked him to come soon. Then it is submitted that second call was made by Santosh Kumar Jain (PW-3), which got connected and somebody else had spoken from the other side and the voice, being vague, Santosh Kumar Jain (PW-3) could not understand it and, therefore, gave the phone to Shyam Soni (PW-5), who heard the demand for ransom along with information of abduction. It is pointed out that victim Rajesh Jain (PW-1) in his examination, is silent about second phone call of Santosh Kumar Jain. When the appellant in cross-examination confronted Rajesh Jain (PW-1) regarding second phone call of Santosh Kumar Jain (PW-3), then Rajesh Jain (PW-1) admitted that it is true that neither Santosh Kumar Jain (PW-3) called him nor his second call was received despite his information given to Santosh Kumar Jain that he is stuck in grave situation. Thus, it is pointed out that Rajesh Kumar Jain (PW-1) contradicted Santosh Kumar Jain (PW-3) and confirmed that no second call was received by any co-accused in case, nor it was made to the mobile phone of Rajesh Jain (PW-1).

33. Thereafter, it is pointed out that fourth story of ransom was introduced by the prosecution through testimony of Shyam Soni (PW-5), who deposed that he had heard the ransom demand on the first call, which was made by Rajesh Jain (PW-1) to Santosh Kumar Jain (PW-3), but Rajesh Jain (PW-1)



and Santosh Kumar Jain (PW-3) contradicted him saying that in the first call Rajesh Jain (PW-1) had only spoken that he is stuck and asked Santosh Kumar Jain (PW-3) to come soon when the call got disconnected. Prosecution has not confronted its witness Shyam Soni (PW-5) as to when and how he heard about the demand of ransom in the very first call, which was neither received by him nor was attended by him.

34. The appellant Dhananjay @ Dinesh Singh @ Arun submits that in paragraph 22 of cross-examination, Shyam Soni (PW-5) was confronted with his prior depositions, thus, contradictions point out that even through Shyam Soni (PW-5), the prosecution failed to establish that any ransom was demanded.

35. It is pointed out that there is intentional suppression of evidence by the prosecution. The call details record of the mobile numbers, which are alleged to be used in the case for making demand of ransom and giving information of abduction, Vijay Singh Paraste (PW-22) stated that he is not an expert and cannot be blamed for not retrieving the electronic evidence and submitting it before the Court but then admitted that at the time of filing of the supplementary charge-sheet, he had produced the CDR detail, which puts a question marks on his earlier statement showing his inability to retrieve CDR.



36. It is submitted that, in the case of ***Tomaso Bruno & another Vs. State of Uttar Pradesh, (2015)7 SCC 178***, in para 28 it is held that *notwithstanding the fact that the burden lies upon the accused to establish the defence plea of alibi in the facts and circumstances of the case, in our view, prosecution in possession of the best evidence, CCTV footage ought to have produced the same. In our considered view, it is a fit case to draw an adverse inference against the prosecution under Section 114(g) of the Evidence Act that the prosecution withheld the same as it would be unfavourable to them had it been produced.*

37. It is submitted that Dr.B.N.Singh (PW-12), Specialist in Internal Medicine, who had examined abductee Rajesh Jain on 28.08.2013 at Sarvodaya Hospital, Sector 8 Faridabad, deposed that at 11:30, the police had admitted him, he had general weakness, vomiting, alter sensorium, his BP was 140/90. In para-9 this witness deposed that Rajesh Jain (PW-1) had informed him that he was abducted on 24.08.2013 from Khandwa and this was narrated by Dr.B.N.Singh (PW-12) in his court statements. This witness also admitted that no test was performed to show as to whether patient was administered any depressant or



intoxicant. Thus, it is pointed out that as per the testimony of independent witness Dr.B.N.Singh (PW-12), the abductee

himself stated that he was abducted from Khandwa and not from Indore, which falsifies the statement of Rajesh Jain (PW-1) that he was abducted from Indore. .

38. Reliance is placed on the judgment of Hon'ble Supreme Court in case of *M. Ammini &ors Vs. State of Kerala, (1998) 2 SCC 301* wherein it is held that *a statement made by a doctor is a reliable piece of information*. In paragraph 17, Hon'ble Supreme Court has held that *if a statement is given by the injured at the time of medical examination, then this statement of the accused amounted to an admission and therefore admissible in evidence*.

39. It is submitted that as per the definition of abduction given under Section 362 of the IPC, allegation on the appellant is that he had lured Rajesh Jain in the name of a land deal. However, the trial Court has observed that prosecution had not investigated the fact of the land deal and there is no document available on record about the fact of land dealing in the case. Therefore, learned trial Court did not allow the appellant to put questions related to this fact. Thus, it is submitted that when aspect of land dealing is not proved, abduction is said to have been made at Khandwa, then no role can be ascribed to



the present appellant. It is pointed out that land dealing being a “fact in issue” and that being not substantiated will be hit by Section 102 of the Indian Evidence Act, 1872.

40. It is pointed out that story of abduction is even not proved through medical evidence. Dr. S.S.Rathore (PW-23) deposed that if any diabetic patient is not given proper food and water, then he will display symptom of acidosis and his blood glucose in the examination report will be low. However, Ex. P-14C, medical report of Rajesh Jain depicted high blood glucose. Dr.B.N.Singh (PW-12), who had examined the patient, deposed that all the vitals were normal. There is admission of doctors that at the time of admission in the hospital, no identification mark of the patient was mentioned in MLC report. Dr.B.N.Singh (PW-12) also deposed that there were no marks of injury or any other mark to show that Rajesh Jain (PW-1) was tied down by any string or rope. There is no medical report to suggest that any drug or stupefying substance was administered to Rajesh Jain (PW-1). Thus, there is no medical evidence to connect the chain of the circumstantial evidence that Rajesh Jain was either abducted or was ill-treated or was unconscious consequent upon the so called abduction nor there is any evidence of demand of ransom.



41. Another contradiction in the story of abduction and demand of ransom is that when the facts of the case are compared with proximity of time and continuity of action *viz a viz* different witnesses, then the whole story becomes very inconsistent and improbable.

42. Reliance is placed on the judgment of Supreme Court in the case of ***Lalita Kumari Vs. State of Uttar Pradesh and others, (2014) 2 SCC 1*** to submit that in paragraphs 54 & 55 of the said judgment, Hon'ble Supreme Court has dealt with the word "shall" which appears in Section 154(1) of Cr.P.C. mentioning that it is mandatory in character and provisions of Section 154(1) of the Code, read in the light of the statutory scheme, do not admit of conferring any discretion on the officer-in-charge of the police station for embarking upon a preliminary enquiry prior to the registration of an FIR. It is settled position of law that if the provision is unambiguous and the legislative intent is clear, the Court need not call into it any other rule of construction. Thus, it is pointed out that no cause of action having taken place at Khandwa, but it being fabricated to have taken place at Khandwa, FIR was lodged at Khandwa and not at Indore, yet prosecution did not produce the general case diary entry before the Magistrate in time.



43. Placing reliance on the judgment of Jharkhand High Court in the case of *Sarju Ghorel & Ors. Vs. State of Bihar (now Jharkhand), 2006 SCC OnLine Jharkhand 49*, it is pointed out that not producing general diary entry in relation to registration of FIR, when challenge in a case is adverse for prosecution.

44. Reliance is also placed on the judgment of Supreme Court in the case of *Susanta Das and others Vs. State of Orisa, AIR 2016 SC 589*, wherein it is held that *if there is evidence to show that FIR was tampered or fabricated and there is delay in procedures of Section 157 Cr.P.C, then the case of prosecution becomes doubtful.*

45. It is pointed out that no offence under Section 120-B of IPC is sustainable as Section 120B, IPC does not deal with any independent offence. Once offence under Section 364A, IPC is not sustainable, then no offence under Section 120-B, IPC alone can be made out. Again relying on the judgment of Hon'ble Supreme Court in the case of *Tomaso Bruno & another (supra)*, it is submitted that burden of proof can never be shifted from prosecution. Vijay Singh Paraste (PW-22) admitted that he had not recorded any statement of the appellant prior to admission nor he had prepared any confessional memorandum



of the appellant in the case under Section 27 of Indian Evidence Act, therefore, there being no material against the appellant, his conviction cannot be upheld. It is pointed out that none of the co-appellants alleged involvement of the appellant- Dhananjay @ Dinesh Singh @ Arun in criminal conspiracy, therefore, no indulgence of the appellant could be proved nor any prior meeting of mind could be substantiated. Thus, there being no evidence under Section 10 and Section 30 of the Indian Evidence Act, allegation on the appellant cannot be substantiated.

46. It is pointed out that Section 120A of the IPC in Sub-para-2 reads that “*provided that no agreement except an agreement to commit an offence shall amounts to a criminal conspiracy unless some act besides the agreement is done by one or other parties to such agreement in pursuance thereof.*” Thus, it is pointed out that there being no such agreement and no evidence of such agreement, guilt of the appellant could not be proved. ***Sanichar Sahni Vs State of Bihar (2009)7 SCC 198*** wherein it is held that under Section 120-B of the IPC, charge of conspiracy against single person cannot be sustained because one person cannot conspire with himself.



47. It is further submitted that in fact the appellant was acting as a planted informer of the Police in regard to which evidence of Inspector of Police was produced in defence, yet, instead of taking the appellant to be informer to burst the Gangs of Bhadoriya and Imam, he has been falsely implicated. It is pointed out that the appellant was in contact with the police before and after the incident as is deposed by Bhullan Yadav (DW-4), therefore, the involvement of appellant cannot be said to be proved.

48. It is also pointed out that conviction of the appellant under Section 149 IPC is also unsustainable inasmuch as Rajesh Jain (PW-1), in para-115 of his deposition, deposed that only four persons abducted him and they administered some stupefying substance to him in car. In para-4 of the examination in chief, Rajesh Jain (PW-1) admitted that the appellant Dhananjay @ Dinesh Singh @ Arun was not present in car and had in fact taken the keys and went away. He was not present in car when the call was made by Rajesh Jain (PW-1) for conveying demand for ransom. Thus, the appellant cannot be said to be a member of unlawful assembly, which even otherwise in terms of Section 141 of IPC, requires five or more persons to designate an assembly as unlawful.



49. Reliance is placed on the judgment of Hon'ble Supreme Court in the case of *Musa Khan and others. Vs. State of Maharashtra, (1977) 1 SCC 733*, wherein it is held that culpable liability does not arise from mere presence in the assembly nor does participation in one incident lead to liability for consequences of all the incidents that the unlawful assembly may consequently indulge in. Liability of each individual accused is to be adjudged on facts.

50. Reliance is also placed on the judgment of Hon'ble Supreme Court in the case of *Darbara Singh Vs. State of Punjab, (2012) 10 SCC 476*, wherein it is held that *once the unlawful assembly is reduced to assembly of four persons, by acquittal of some of the other co-accused in the case, then the other accused cannot be convicted with the aid of Section 149 IPC but can be convicted under Section 34 IPC.*

51. It is also pointed out that no offence under Section 420 of the IPC is made out inasmuch as it is admitted by Rajesh Jain (PW-1) that the appellant had not affected any of his properties nor had acquired, destroyed, transferred any valuable things of the said victim in case. In fact, the keys of the car, which were alleged to be taken by the appellant, were also admitted to be with Rajesh Jain (PW-1). The burden was on Rajesh Jain (PW-1) to establish that how it reached



him and when it was the appellant and the appellant was absconding and never met Rajesh Jain (PW-1) again.

52. Reliance is placed on judgment of Allahabad High Court in the case of *K.K. Chopra and etc. etc. Vs. State of UP, 1991 (1) CRCJ 316* wherein it is held that *any cheating by personification is different offence under different section of IPC.*

53. The appellant Arun Tiwari submits that in fact it's a case of no demand and Rajesh Jain staged his own abduction so to seek partition of his father's property. It is submitted that Rajesh Jain admitted, in his cross-examination, that his income tax return was to the tune of 3 to 3 ½ lakhs which will render him to be a person belonging to the lower middle class, who are meeting their ends. Therefore, there was no occasion for staging such a big plot of kidnapping with difficulty and ransom to deal with a person whose family wealth is admittedly less than 1 crore. Thus, it is submitted that the appellant Arun Tiwari is innocent. He be acquitted of the charges and the appeal be allowed.

54. It is submitted by Shri Surendra Singh, learned Senior counsel for the appellants that four witnesses who have deposed regarding demand of ransom



namely Rajesh Jain (PW-1), Rajeev Jain (PW-2), Santosh Jain (PW-3) and Shyam Soni (PW-4), their evidence is contradictory rendering it false.

55. It is submitted that though it is alleged that demand for ransom was allegedly made over the telephone but police has not led any evidence in regard to number of those telephones to corroborate the oral testimony. This raises an adverse inference against the prosecution rendering the story of demand for ransom totally false.

56. Reliance is placed on the judgment of **Tomaso Bruno and Another Vs. State of Uttar Pradesh, (2015) 7 SCC 178**), wherein in paragraphs 26 and 27, it is noted that –

26. “The trial Court in its judgment held that non-collection of CCTV footage, incomplete site plan, non-inclusion of all records and sim details of mobile phones seized from the accused are instances of faulty investigation and the same would not affect the prosecution case. Non-production of CCTV footage, non-collection of call records (details) and sim details of mobile phones seized from the accused cannot be said to be mere instances of faulty investigation but amount to withholding of best evidence. It



is not the case of the prosecution that CCTV footage could not be lifted or a CD copy could not be made.

27. As per Section 114 Illustration (g) of the Evidence Act, if a party in possession of best evidence which will throw light in controversy withholds it, the court can draw an adverse inference against him notwithstanding that the onus of proving does not lie on him. The presumption under Section 114 Illustration (g) of the Evidence Act is only a permissible inference and not a necessary inference. Unlike presumption under Section 139 of Negotiable Instruments Act, where the court has no option but to draw a statutory presumption, under Section 114 of the Evidence Act, the Court has the option; the court may or may not raise presumption on the proof of certain facts. Drawing of presumption under Section 114 Illustration (g) of Evidence Act depends upon the nature of fact required to be proved and it's importance in the controversy, the usual mode of proving it; the nature, quality and cogency of the evidence which has not been produced and its accessibility to the party



concerned, all of which have to be taken into account. It is only when all these matters are duly considered that an adverse inference can be drawn against the party.”

57. It is pointed out that evidence of Rajesh Jain (PW-1) is liable to be rejected for the reasons that he stated that one of the kidnappers had demanded ransom from Rajeev Jain (PW-2), a fact which has been denied by Rajeev Jain (PW-2). Therefore, Rajesh Jain (PW-1) has been falsified on a most material point, no credence or reliability can be placed on this deposition that ransom was demanded from him.

58. In paragraph 54 of cross-examination, this witness Rajesh Jain (PW-1) admitted that he had informed Santosh Kumar Jain that he was trapped and asked him to come but neither Santosh Kumar Jain came nor his phone as he had not given his location. He stated that thereafter accused had snatched his phone and he cannot say as to whether Santosh Kumar Jain had called again or not. He does not remember as to whether accused had talked to Santosh Kumar Jain or not.

59. Thus, it is pointed out that Rajesh Jain (PW-1) has contradicted himself in regard to demand of ransom. Though, he has stated that who had given identity of the person, who demanded ransom from Rajeev Jain, but there



is contradiction in regard to this evidence. It is pointed out that Rajesh Jain had gained consciousness on 28.08.2013 and was in constant company of the police but did not disclose demand for ransom prior to recording of his statement on 30.08.2013.

60. It is submitted by Shri Surendra Singh, learned Senior Counsel that evidence of Rajeev Jain (PW-2) is liable to be rejected because he stated in his examination-in-chief that ransom was demanded from him by a kidnapper, but in paragraph 8 of his cross-examination, this witness Rajeev Jain (PW-2) admitted that there was no Caller Line Identification Presentation (C.L.I.P.) installed on his landline phone on which he had received a call and that he had identified the voice of his brother.

61. In paragraph 9, this witness admitted that it was Santosh, who had informed him to keep arrangement of Rs.5 crores otherwise to face consequences. Then, this witness further admitted that when he had received a phone call in regard to kidnapping of his brother, then it was only dictated that police be not informed. In regard to arrangement of Rs.5 crores and wait for another call was informed by him whereas Santosh admitted that as he could not understand the call, the phone was taken by Shyam Soni (PW-4). Thus, it is



evident that submission of Rajeev Jain (PW-2) that any demand of ransom was made from him is not proved.

62. It is further submitted that in the FIR, Ex.P-4, there is omission of demand of ransom, inasmuch as, in the FIR, it is mentioned that when he had called Santosh Kumar Jain, then Santosh Kumar Jain had informed him that he too had received a call in regard to kidnapping of Rajesh Jain and then when Santosh Kumar Jain contacted Dhananjay Solanki, then he stated that Rajesh Jain was kidnapped and Rs.5 crores ransom should be kept ready. However, Rajeev Jain (PW-2) admitted that he had not given name of any person, who had demanded ransom from him.

63. There is omission in the case diary statements of Rajeev Jain (Ex.D-4) in regard to any demand being put forth to this witness in regard to ransom. It is only stated that when he had contacted Santosh Jain, then Santosh Jain informed that ransom was demanded from him.

64. Reliance is placed on the judgment of Hon'ble Supreme Court in the case of **B.N. John Vs. State of U.P and Another, (2025 SCC OnLine (SC) 7 (paragraph-35) and Sampath Kumar Vs. Inspector of Police Krishnagiri, AIR 2012 SC 1249 (Paragraph-9); (2012) 4 SCC 124.**



65. It is pointed that in FIR, which is authored by Rajeev Jain (PW-2), it is mentioned that Santosh had informed him that demand for ransom was made by Dhananjay. However, Santosh Jain (PW-3) has not stated that a demand for ransom was made by Dhananjay or that he stated this fact to Rajeev Jain (PW-2). As Santosh Jain (PW-3) does not depose about ransom being demanded by Dhananjay, the evidence of Rajeev Jain (PW-2) is hit by the rule of hearsay evidence and is, therefore, inadmissible.

66. Reliance is also placed on the judgments of **Vijendra Vs. State of Delhi, (1997) 6 SCC 171 (Paragraph 10 and 11), Labhuji Amratji Thakor and Others Vs. State of Gujarat and Another, AIR 2019 SC 734 (paragraph-12) and Neeraj Dutta Vs. State (Government of NCT of Delhi), AIR 2023 SC 330 (Paragraph-34).**

67. It is pointed out that in fact Rajesh Jain (PW-1) admitted that Dhananjay had not made any demand for ransom. He has also admitted that no loss was caused to the physical property of Rajesh and it is further admitted that his car keys were with him. This witness also admitted that Dhananjay had not travelled with them in the car when phone call was received from Rajesh.

68. In paragraph 15, this witness admitted that when he was recovered, there was not a single mark of scratch on his body and he had not informed in his



statements as to on which parts of his body, the tape was fixed, which may have resulted in uprooting of hair follicle.

69. As far as, Shyam Soni (PW-4) is concerned, his evidence too in regard to demand of ransom is liable to be rejected, inasmuch as, Rajesh Jain (PW-1) has stated that from the car only one demand for ransom was made and that too from his brother Rajeev Jain. He does not say that any further demand was made by anybody else. This renders the evidence of Shyam Soni totally false and unreliable.

70. It is also submitted that Shyam Soni (PW-4) was with Santosh Jain (PW-3) and both had visited Police Station, Vijay Nagar. They had allegedly informed Police Station, Vijay Nagar about the incident. Thereafter, search was made by the police and subsequent to this Shyam Soni (PW-4) spent entire night at Police Station, Vijay Nagar. Despite this, no report was lodged at Police Station, Vijay Nagar. This causes dent to the testimony of Shyam Soni (PW-4).

71. It is also submitted that not a single police officer from police station Vijay Nagar has been examined to corroborate the version of Shyam Soni (PW-4) that he had gone to the Police Station, Vijay Nagar, informed them regarding the incident, or that there was any search for the kidnapped person. This raises an adverse inference against the prosecution.



72. It is pointed out that there is another omission that if demand for ransom would have been made from car, then it would not have been recorded in the FIR.

73. Shri Surendra Singh, learned Senior Advocate submits that as far as apprehension/arrest of Sudhir Bhadoria is concerned, there are three witnesses on the point, namely, ASI Narendra (PW-23), ACP Rajesh Kumar Chawda (PW-26) and ASI Vijay Singh Paraste (PW-30), but their evidence is so contradictory, that it renders the prosecution story wholly unreliable, that Sudhir Bharodiya was arrested outside the building.

74. Inspector Narendra (PW-23), in his examination-in-chief, stated that Sudhir Bhadoria came down from the building on his own and when he approached the white Innova Car, then he was apprehended.

75. However, in paragraph 30 of his deposition, he has stated that he went up to the flat, rang the bell and that the appellant Sudhir Bhadoria came out of the room. Then he asked the appellant to remove the Innova Car that was parked outside the building. Thereafter, Inspector Narendra (PW-23) came down from the building and that the appellant Sudhir Bhadoria followed him. He was apprehended. On the other hand, ASI Vijay Singh Paraste (PW-30) stated that he was a member of raiding party had entered Flat No.1106 and apprehended



Sudhir Bhadoria from inside the flat. Thus, there is evident contradiction in the statements of these two witnesses.

76. Shri Krishna (PW-11), landlord of the building, stated that only three accused were apprehended by the police, which indicates that Sudhir Bhadoria was not present when the police raided the flat. Late arrest of the appellant also corroborates the fact that he was not present when the police party raided the building at Faridabad.

77. As far discovery under Section 27 of the Evidence Act and seizure is concerned, it is submitted that all articles were seized from inside Flat No.1106. The police party entered this flat at about 06.30 AM. The party consisted of about 15 persons. Since, police party was aware of the fact that arms, ammunition and other articles were in the flat, there can be no discovery as contemplated by Section 27, Evidence Act. Reference is made to the judgment of Hon'ble Supreme Court in the case of **Vijendra Vs. State of Delhi, (1997) 6 SCC 171**.

78. It is also submitted that police party having seized these articles on a simple search of the flat renders the discovery as farce. Reliance is placed on the judgment of Supreme Court in the case of **State of Madhya Pradesh Vs. Nisar, AIR 2007 SC 2316**.



79. It is pointed out that identification is also liable to be rejected. Inasmuch as, Inspector R.C. Bhakar (PW-29), in paragraphs 9 to 16 of his deposition, admitted that Rajesh Jain (PW-1) was summoned to Police Station, Kotwali, Khandwa on 30.08.2013 and when he had come to Police Station, Kotwali, the accused were present, therefore, as the witness had an opportunity to see the accused, such identification is valueless. Reliance is placed on the judgment of Hon'ble Supreme Court in the case of **Gireesan Nair and Others Vs. State of Kerala, 2023 (1) SCC 180.**

80. It is further pointed out that Rajesh Jain (PW-1) admitted that he had not given description of the kidnappers in his statement recorded under Section 161 of Cr.P.C.. This is again another circumstance to render identification valueless as held by Supreme Court in the case of **Amrik Singh Vs. State of Punjab (2022) 9 SCC 402 (Paragraph-15).**

81. Santosh Kumar Jain (PW-3) and Shyam Soni (PW-4) admitted that photographs of the accused were published in the newspapers. This again renders identification valueless as held in the case of **State of Madhya Pradesh Vs. Chamru Alias Bhagwandas and Others, AIR 2007 SC 2400; (2007) 12 SCC 423.**



82. It is submitted that accused were remanded to judicial custody on 31.08.2013, but Test Identification Parade was held 18 days later. This delay further renders the identification valueless as held in the case of **Gireesan Nair and others Vs. State of Kerala, (2023) 1 SCC 180**.

83. It is thus submitted that whole trial is vitiated and cannot be allowed to stand the scrutiny of legal parameters, therefore, it is a case of no evidence, where acquittal should be recorded.

84. In the alternative, it is argued that, at best, it is a case under Section 365 of IPC and since there is no demand for ransom conviction under Section 364-A IPC cannot be maintained and it be altered to one under Section 365 of IPC.

85. Learned Government Advocate supports impugned judgment passed by the learned trial Court and submits that appellant are members of a dreaded gang, thus no indulgence is called for.

86. After hearing learned counsel for the parties and going through the record, it reveals that the main thrust of arguments put forth by learned counsel for the parties and a party appearing in person are that firstly, Rajesh Jain (PW-1)



stage managed his own abduction so do derive partition in property of his father for his own benefit and for the benefit of his family.

87. Second argument is that place of incident has been conveniently manipulated. Inasmuch as, whole investigation took place at Khandwa, whereas according to the story of the prosecution itself Rajesh Jain (PW-1) along with three other members had visited Indore with a view to strike a land deal in relation to which there were series of meeting and then Rajesh Jain was taken to a bypass road in the name of meeting with the so-called boss. But despite the fact that Rajesh Jain was reported to be missing from Indore and it is an admitted fact that two of his family members/friends visited Vijay Nagar, Police Station informing about abduction but FIR was lodged at Khandwa and not at Indore.

88. Thus, it is submitted that prosecution has failed to prove the actual place of the incident and benefit of doubt will accrue in favour of the accused.

89. It is also submitted that as far as Sudhir Bhadoria is concerned, his arrest has been shown in a most dramatic manner from Faridabad, saying that he had come down and was walking towards his white colour Innova Car parked in front of the residential area where Rajesh Jain was kept, when he was arrested.



90. It is pointed out that the story of police arresting Sudhir Bhadoria from Faridabad is not made out from the documents and is again a concoction in the hands of the prosecution which causes dent to the prosecution story.

91. It is also submitted that there is ambiguity in the number of persons who were present. Arun Tiwari, admittedly, after introducing Rajesh Jain to the so-called boss, who was sitting in a car, had not travelled to Faridabad. It is alleged that he had taken keys of the car of Santosh Jain for parking it, but Santosh Jain himself admitted that keys of the car were recovered from him while Arun Tiwari was reported to be absconding. Thus, it is submitted that there are inconsistent pieces of evidence, which prosecution has tried to connect to weave a net to take into its phone the appellants, though there is no case.

92. It is also pointed out that to constitute an offence under Section 364-A, there are two ingredients, namely, kidnapping or abduction of any person or keeping a person in detention after such kidnapping or abduction, and second element is threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt, or causes hurt or death to such person in order to compel the other person to do or abstain from doing any act or to pay a ransom, shall be punishable with death, or life imprisonment and shall also be liable to fine.



93. It is submitted that essential ingredients of Section 364-A of the IPC are not made out, therefore, in absence of the element of demand of ransom or there have been any element of threat to Rajesh Jain either of death or hurt, charge under Section 364-A is not sustainable.

94. In the alternative, it is submitted that firstly appellants are entitled to be acquitted from all the charges under Sections 420, 364-A/149, 120-B, 328/149 of IPC as none of these charges are made out.

95. As far as, other appellant Ripusudan @ Rajesh Goutam is concerned, he be acquitted from charges under Section 364-A read with Section 120-B of IPC and Section 25(1-B)(a) of Arms Act, 1959.

96. Conviction of appellant Sudhir @ Rajsingh Bhadoria under Sections 420, 364-A, 120-B, 328, 473, 171 of IPC, Section 5 of Explosive Substances Act, 1908 and Section 25(1-B)(a) of the Arms Act, 1959. And conviction of Pradip @ Rajeev Shrivastava, Mohammad Inam @ Haji and Onkarsingh @ Setthi under Sections 420, 364-A, 120-B, 328, 473 of IPC, Section 5 of Explosive Substances Act, 1908 and Section 25(1-B)(a) of the Arms Act, 1959, be set aside.



97. In the alternative, it is submitted that at best it's a case under Section 365 of IPC, and in the alternate, it is prayed that conviction of the appellants be modified from one under Section 364-A of IPC to Section 365 of IPC.

98. It is submitted that no valuable security was obtained, therefore, conviction under Section 420 of IPC will not be made out.

99. Similarly, conviction under Section 328 of IPC, which deals with administration of poison or any stupefying, intoxicating or unwholesome drug, or other thing with intent to cause hurt to such person, or with intent to commit or to facilitate the commission of an offence or knowing it to be likely that he will thereby cause hurt, is also not proved.

100. Even ingredients of Section 473 of IPC, which deals with making or possessing counterfeit seal etc., with intent to commit forgery punishable otherwise, is not made out. Therefore, even conviction under Section 473 of IPC is uncalled for.

101. As far as, Section 171 of IPC is concerned, which deals with the aspect of a person not belonging to a certain class of public servants, if wears any garb or carries any token resembling any garb or token used by that class of public servants, with the intention that it may be believed, or with the knowledge that it is likely to be believed, that he belongs to that class of public servants,



shall be punished with imprisonment as provided under this section is not made out, as there is no such attempt on the part of any of the accused persons. Thus, it is submitted that conviction needs to be set aside.

102. It is admitted fact that informant Rajeev Jain (PW-2) on 24.08.2013 at about 23:55 hours, presented himself at Police Station Kotwali, Khandwa and reported that he is involved in the business of gold and silver jewelry. They are three brothers, namely, Rajesh Jain (PW-1), Rajeev Jain (PW-2) and Santosh Kumar Jain (PW-3), who reside as a joint family. On 24.08.2013 at about 06:30 PM on his landline number 2225927, he had received an intimation that unknown person had abducted his brother and he was asked to not to call the police but wait for another call. Thereafter, complainant Rajeev Jain (PW-2) had called his elder brother Rajesh on his mobile number 9826047721, which was found to be switched off. Then, he called his another brother Rajneesh Jain and younger brother Santosh Kumar Jain (PW-3). Santosh Jain informed him that one Dhananjay Solanki had come to enter into a contract for land deal and he too had received intimation in regard to kidnapping of Rajesh Jain on this mobile phone. Thereafter, it is informed that Rajeev Jain (PW-2) had contacted Dhananjay Solanki, who informed that Rajesh Jain was abducted and demanded ransom of Rs.5 crores, failing which threatened with serious consequences. This



information was shared by Rajeev Jain with his other brothers and relatives at Indore.

103. On such oral intimation, Shri R.C. Bhakar, Incharge SHO, Police Station Kotwali (PW-29) recorded the FIR, registering case Crime No.464/13 dated 24.08.2013 under Section 364-A of IPC. Copy of FIR is Ex.P-4. On 25.08.2013, Shri R.C. Bhakar had visited hotel Ranjeet at Khandwa and got room No.117, opened. He prepared a Talashi Panchnama, Ex.P-11 and then seizure memo Ex.P-12 to P-16. Spot map, Ex.P-5 at the instance of Rajeev Jain was prepared. It has come on record that the then SHO, Police Station, Lathuriya Indore, namely, Shri Basant Kumar Mishra (PW-28) vide seizure memo dated 25.08.2013 (Ex.P-21) had handed over motor vehicle No. MP09 CC 3501 to Shri Rajeev Jain. Thereafter, Shri R.C. Bhakar (PW-29) had recorded statements of ten persons under Section 161, namely, Rajeev Jain (PW-2), Rajneesh Jain (PW-7), Sandeep Jain (PW-8), Manoj Pareek (PW-25), Pankaj Parambe (PW-21), Rajesh Pareek (PW-27), Shyam Soni (PW-4), Rajendra (PW-9), Pramod Kori (PW-19) and Hukum Verma (PW-10).

104. Further proceedings were drawn by Shri Vijay Singh Paraste (PW-30), who had prepared a Talashi Panchnama after obtaining consent of the landlord Shri Krishna Verma's (PW-11) son Manish Verma, who has not been



examined before the trial Court and made seizure vide Ex.P-41 on 28.08.2013. He also prepared recovery Panchnama Ex.P-42 and freed abducted Rajesh Jain (PW-1) from said House No.1106, Sector 3, District Faridabad, Haryana. Seizure was made on 28.08.2013 vide Ex.P-32 to P-35 and the seized goods are from article 1 to article 67 and thereafter the accused persons were arrested.

105. On 28.08.2013, as per Ex.P-1, Rajesh Jain (PW-1) was handed over to his brother Rajneesh Jain (PW-7) and Rajesh was subjected to medical examination at Sarvodaya Hospital, Section 8, Faridabad vide Ex.D-1 and thereafter he was relieved from the hospital.

106. Apart from this, general defence, one Pankaj Kharat, who was acquitted by the learned trial Court, took a defence that he was working as a CT/GD Sipahi in CRPF. At present, he is under termination. On 24.03.2011, when he had come on leave from Mijoram, then he was made an accused in the case of murder of his grandmother.

107. Learned trial Court framed as many as 12 issues, including whether on 24.08.2013 at about 6:30 PM at Khandwa with a view to demand ransom, the accused had entered into an illegal agreement with victim Rajesh Jain (PW-1) for demand of ransom of Rs.5 crores. Another issue, which was framed, was whether accused made victim Rajesh Jain to travel to Indore with a view to enter



into an agreement to purchase some land at village Ichchhapur at a rate of Rs. 28,50,000/- per acre, so to dupe him. Whether, Rajesh Jain (PW-1) was abducted in terms of the provisions contained in Section 362 of IPC and was kept in an illegal confinement under a threat of death/grievous injury. Another issue was whether Rajesh Jain was threatened and compelled while under abduction to pay a sum of Rs.5 crores as ransom. Learned trial Court also framed an issue as to whether Rajesh Jain was administered some poisonous/stupefying/narcotic/unhealthy medicine and whether accused had kept overall six fabricated number plates to travel from Madhya Pradesh, Uttar Pradesh and Delhi.

108. Whether accused No.1 Sudhir @ Rajsingh Bhadoria used a uniform which is used by the members of the Uttar Pradesh Police including the token, ribbon, belt etc. Also whether in the House No.1106, Sector 3, accused No.1 to 4 had kept certain explosive substances as mentioned under Section 2-A of the Explosive Substances Act, 1908 and they kept certain substances, like, gola barood and other fire arms in violation of the provisions contained in Section 2(d) and 2(e) of the Arms Act, 1959.

109. After examining the evidence, aforesaid separate judgments of conviction have been passed.



110. Since, one of the issues relating to use of police uniform as worn by members of the Uttar Pradesh State Police is only in regard to appellant No.1 Sudhir Bhadoria whereas other issues are common for all other accused persons, it will be proper to first deal with the issue of uniform as discussed by learned trial Court.

111. As per the order-sheet dated 23.03.2015, when examination-in-chief of Vijay Singh Paraste was carried out, on that date order-sheet as was drawn by learned First Additional Session Judge makes a mention that State through Shri Vinod Patel, ADPO. Accused Sudhir Bhadoria was not presented from Ujjain Jail, only warrant was presented. All other accused were present from Central Jail, Indore along with Shri Sanjay Sharma, Advocate.

112. Examination-in-chief of Vijay Singh Paraste was carried out but on account of completion of Court timings, the case was fixed for his cross-examination on 17.04.2015. On 17.04.2015, the order-sheet reads that Sudhir Bhadoria was not presented from the Ujjain Jail nor any warrant was presented. The other accused persons were not present from Central Jail, Indore nor their warrant was produced, one Rupesh Panchariya, Advocate was present. Shri Rohit Tomar appeared for Pankaj. It is also mentioned that fax was received from Central Jail, Indore and Ujjain that due to non-availability of police force at



DRP lines, the accused persons could not be presented and the time was sought to present the accused. An application was filed by Shri Rupesh Panchariya stating that Shri Sanjay Sharma appearing for other accused persons is not present because of ill health and prayed for time. In support, he had produced prescription of Shri Sanjay Sharma but that request was rejected by the learned trial Court.

113. In the case of **Baigan Singh Vs. Emperor, (1927) 6 Pat 691**, it is held that a trial is vitiated by failure to examine the witnesses in the presence of the accused. Mere cross-examination in the presence of the accused is not sufficient.

114. Thus, finding of the learned trial Court, in paragraphs 56 to 58, that the appellant Sudhir Bhadoria was putting on uniform of Uttar Pradesh State Police including token like, ribbon, belt, whistle, rope etc. is contrary to the record, inasmuch as Ex.P-28 doesn't reveal that Sudhir Bhadoria was wearing those articles but only says that they were seized, but Ex.P-28, memorandum, only says that Sudhir @ Rajsingh Bhadoria had only kept these articles and, therefore, finding being perverse to the recovery memo, Ex.P36, as well as memorandum, Ex.P-28, which clearly makes a mention that recovery was made from House No.1106, Sector 3, house of Ripusudhan and nowhere makes a



mention that when Sudhir Bhadoria was arrested vide arrest memo, Ex.P-20, he was wearing any uniform of Uttar Pradesh State Police.

115. Even Raju Sharma (PW-22), who was examined on 25.09.2014, stated that he does not recognize any of the accused persons, they were not arrested in front of him, police had not questioned these accused in front of him nor any recovery was made or any statements were recorded, no material was seized by the police in front of him. This witness in cross-examination admitted that he is under fear of police and had signed all the documents under the fear of police. He further admitted that neither accused were arrested in front of him nor their statements were recorded or any seizure was made in front of him, therefore, contention of the learned trial Judge that Raju Sharma (PW-22) admitted his signatures is not a sufficient circumstance.

116. Police Inspector Narendra (PW-23) admitted in paragraph 29, that they had reached near Innova Car at about 04:00 AM, they had not found any number of any of the vehicle to be false or fabricated.

117. He contradicted the statements of Shri Paraste by saying that when they had received information from the informant, then they kept waiting for the accused persons to come down but none of the accused persons came down when between 06:30 to 7:00 AM, this witness had gone to the second floor of the



house and had rang the bell, prior to that he had rang the bell of first floor and he was informed that bell of second floor is different. He had not caused any inquiry from the person who had opened the gate on ringing the bell door of first floor. The person who had answered the ring bell of the second floor was asked to come down to remove his vehicle, as it was a Janmashtami day. The person who had come down to move the vehicle was caught when Mr. Paraste and his team had caught hold of other persons.

118. In paragraph 31, this witness stated that all the accused were sitting with arms in their hands but without giving them any opportunity they caught hold of them. They had snatched the arms from the accused persons. This witness stated that he had first entered in the room and caught hold of Mohammad Inam @ Haji when other police personnel caught hold of other co-accused persons. This witness also stated that Sudhir was also brought to the room and other persons of the team were holding him.

119. He further admitted in paragraph 32 that none of the accused attacked them and stated that they had taken all the arms of the accused persons. They had taken custody of all the arms and had kept them at one place, size of the room was 10x10, about 8 to 10 persons of police team went inside and some



persons waited outside. Chawda Ji had left the place after giving instructions. All the proceeding were drawn by Vijay Singh Paraste.

120. He admitted that Raju (PW-22) is a property dealer and is a resident of Sector 15 Ajronda, Faridabad which is 6 to 7 kms away from the place of the incident.

121. Thus, it is evident that arms were sized prior to recording of memorandums and, therefore, there is no corroboration between the seizure of arms and preparation of memorandum under Section 27 of the Evidence Act. In paragraph 41, it is mentioned that after preparation of the memorandum under Section 27, Paraste had called Sudhir when he had given a bag to Paraste Ji, that bag contained police uniform etc. besides documents in regard to Rajesh Jain, who was kidnapped. This witness admitted that he does not remember whether these articles were seized or not.

122. In paragraph 45, this witness stated that after catching hold of the accused, they were informed that Rajesh Jain was in another room. He had gone to another room and found Rajesh Jain to be unconscious. He tried to wake him up but when did not succeed, then 2-3 members of the team had taken him to Sarvodaya Hospital, Sector 7. He admitted that he does not remember names of the person who had taken him to Sarvodaya Hospital, Sector 7. This witness



thus admitted that relatives of Rajesh Jain were not present when he was taken to Sarvodaya Hospital and thus the justification given by the I.O. that Rajesh was taken to Sarvodaya Hospital at the instance of his brother PW-7 is not made out.

123. In paragraph 48, several suggestions have been given to this witness which have been denied but one important factor is that Shri Paraste was not examined in front of accused Sudhir Bhadoria, therefore, in the light of the judgment of Madhya Pradesh High Court in **Budhram (supra)**, charge under Section 171 of IPC as regards possession of any garb, or any token resembling any garb or token used by that class of public servants is not made out. Therefore, Sudhir Bhadoria deserves to be and is hereby acquitted from charges under Section 171 of IPC.

124. As far as charge under Section 420 of IPC is concerned, learned trial Court in paragraph 44 of its judgment has noted that Santosh Jain (PW-3), Shyam Soni (PW-4) and Rajesh Pareek (PW-27) were examined, and that Rajesh Jain (PW-1) was not owning the said land at the relevant point of time and was not competent to enter into any contract in relation to said land. It is also noted that Rajesh Jain (PW-1) admitted that from 18.08.2013 to 4.09.2013, he was not the land owner of the said land but stated that he was orally authorized to enter into a contract for which he received a sum of Rs.5001/- from Dhananjay



Solanki. When Rajesh Jain (PW-1) is examined and cross-examined on behalf of Dhananjay Solanki, then in paragraph 31, Rajesh Jain admits that there was no finality of the contract, accused used to tell him that deal will be finalized with his bosses at Indore. This witness admitted that he is a graduate and understands the meaning of finality. He also admitted in paragraph 32 that he understands as to what all formalities are required to be completed in a transaction of land. He was also aware of the fact that if any deal was being made with NHAI, which is an authority of central government, then such deals are made as per the government rules and payment is made through bank.

125. In paragraph 33, this witness admitted that even if a small plot is purchased than verification of documents is carried out, boundaries are verified and deals are made with the original owner. This witness further admitted that both accused Dhananjay and this witness had met for the first time. This witness also admitted that Dhananjay had not asked him to come alone to Indore and had refrained him from bringing other persons to Indore. He further admitted that to enter into an agreement authorized person is must, then improvise his statement and stated that since there was an assurance to carry out direct registry, therefore, agreement was not required.



126. Rajesh Jain (PW-1) further admits that all the brokers had information about the proposed deal and he had no doubt on the brokers being involved in any conspiracy. He also admitted that brokers had not given him any incorrect information.

127. When these facts are examined, then to constitute an offence under Section 420 of IPC, it is necessary that property must be delivered in pursuance of the deception, then only the offence is punishable under Section 420 of IPC and if in pursuance of the deception no property passes, the offence is one of cheating punishable under Section 417 of IPC. Hon'ble Guwahati High Court in the case of **Anilesh Chandra Vs. State of Assam, AIR 1951 Ass 122** held the difference between Section 417 and Section 420 of IPC is that where in pursuance of the deception, no property passes, the offence is one of cheating punishable under Section 417, but where, in pursuance of the deception, property is delivered, the offence is punishable under Section 420 of IPC.

128. In the present case, since admittedly no property was delivered, at best, the offence put be under Section 417 and not under Section 420 of IPC because element of delivery of property is missing in the present case, therefore, on that ground charge under Section 420 of IPC too is not substantiated and is liable to be set aside and is set aside.



129. As far as charge under Section 473 of IPC is concerned, allegation is that six forged number plates of vehicle were recovered from House No.1106 Sector 3, Faridabad so to constitute a charge under Section 473 of IPC. Learned trial Court has mentioned that though Raju Sharma (PW-22) has not supported seizure memo dated 28.08.2013 (Ex.P-41), though he has admitted his signatures but Narendra (PW-23), a police personnel admitted these documents in paragraph 20 of his examination, he admitted his signatures on Ex.P-41. He has proved recovery of 6 numbers of number plates, therefore, ingredients of Section 473 of IPC have been proved beyond reasonable doubt and, therefore, conviction of appellants, Sudhir @ Rajsingh Bhadoria, Pradip @ Rajeev Shrivastava, Mohaammad Inam @ Haji and Onkarsingh @ Setthi under Section 473 of IPC does not call for any interference and, therefore, that conviction being in confirmation of the evidence available on record is upheld.

130. As far as charge under Section 328 of IPC is concerned, it requires that it is for the prosecution to prove that Rajesh Jain was hurt by means of poison or any stupefying, intoxicating or unwholesome drug, or other thing with intent to cause hurt to such person or with intent to commit or to facilitate the commission of an offence.



131. This charge needs to be dealt with in two parts i.e. in relation to accused Sudhir @ Rajsingh Bhadoria, Pradip @ Rajeev Shrivastava, Mohammad Inam @ Haji and Onkarsingh @ Setthi on one hand and Dhananjay @ Dinesh Singh @ Arun on the other hand, inasmuch as, first four have been convicted under Section 328 of IPC simplicitor, whereas Dhananjay has been convicted under Section 328 with the aid of Section 149 of IPC.

132. Evidence of Rajesh Jain (PW-1) and Dr. B.N. Singh (PW-17) is material on this aspect. In paragraph 45 of his cross-examination, Rajesh Jain (PW-1) stated that after shaking hands he entered in the car, parked on the highway. He was not knowing the name of the person, who was sitting inside the car. Two persons were standing outside and one person was sitting on the rear seat of the car. Other person had gone and sit on the front seat of the car by the side of the driver. On the driver seat Rajeev Shrivastava was sitting. Dhananjay Solanki had asked for his car keys saying that he will park it on the side, when he had given his car keys to him. Allegation is that after closing the doors as soon as he had given the car keys, pistol was pointed on him. This witness clearly stated that he does not remember as to who had asked for ransom. He admitted that no ransom was paid by he himself or his family. He was not beaten. He was not unconscious during these 20 minutes. In the meanwhile, he was receiving calls



on his mobile from his brother Santosh Jain. In the meanwhile, some medicine was administered to him. He admitted that who had administered that medicine to him is not known to him. He further admitted that his hands were tied with a tape, his nose was closed and though he tried to close his mouth but one person had pressed it and another had administered medicine. In paragraph 45 itself, this witness admitted that when he was unconscious than car was standing. This witness admitted that after sitting in the car and till becoming unconscious, he could not see as to where Dhananjay Solanki was?

133. In paragraph 46, Rajesh Jain (PW-1) admitted that Santosh Jain called him on his mobile, he had received that call. He had stated that he is trapped and asked him to come soon. His mobile was thereafter snatched and closed. He was not beaten during this period. These persons had taken his mobile, then they asked him to dial his home number and then he had dialed his home number which was picked by Rajeev Jain. When he addressed Rajeev Jain as Guddu Guddu...., then they had snatched the mobile. Who had snatched that mobile is not known, they had informed Rajeev that they have kidnapped his brother and demanded Rs.5 crores. This witness admitted that he cannot say as to who asked for the ransom. This witness admitted that he does not know the name



of the person who demanded ransom. After that he had become unconscious and gained consciousness at Faridabad.

134. In paragraph 47, this witness admitted that he was not hurt, while tape was put to tie him.

135. In paragraph 48, this witness stated that he gained consciousness at Faridabad hospital, name of which is not known to him at about 8:00 – 9:00 PM. He admitted that he does not know as to what happened with him during his state of unconsciousness. After gaining consciousness he remained in hospital for about 2 hours, when police had handed him over to his brother Rajneesh Jain.

136. In paragraph 50, this witness states that he does not remember as to where and when he gained consciousness. Then it was stated that when he gained consciousness he had gone to Delhi along with his brother-in-law Ashok Jain. From Delhi he had travelled to Indore in a aeroplane. One police personnel had accompanied him. Police personnel was in civil dress. He had no conversation with the police personnel during his journey. After getting down at Indore airport, they had gone to Khandwa from Indore airport. Rajneesh, Rajeev, Santosh Jain and Sandeep Jain had come to pick him up at Indore and with them he had gone to Khnadwa. He was fully conscious when he travelled from Delhi



to Indore. They had stayed at Delhi for one night. He had stayed with his brother-in-law Ashok at Delhi in his house.

137. Thus, there is contradiction in his evidence given in paragraph 48 when he says that police personnel had handed him over to Rajneesh at Faridabad hospital whereas in paragraph 50, this witness states that his brother Rajneesh along with others had come to Indore airport to pick him up.

138. In paragraph 51, this witness admits that later on he was informed that he had gained consciousness in some hospital at Faridabad. He further stated that he does not remember as to whether any doctor had interrogated him at Faridabad or not. He further admitted that his condition in hospital was fine and, therefore, he was relieved from the hospital and thereafter he did not sought admission in a hospital. He had taken treatment for a day or two at Khandwa because he was feeling very weak. He further admits that no medical examination was conducted as to which intoxicant was administered to him to make him unconscious.

139. This evidence when read in the light of evidence of Doctor B.N. Singh (PW-17) was examined on 11.04.2014, then he stated that Rajesh Jain was admitted in the ICU along with MLC paper on 28.08.2013. Doctor had examined him at 12:10 PM. On examination, he was found to be semiconscious. During



investigation he was found to be normal. It was found that he was under intoxication of some medicine. Patient had obtained discharge on his own and at that time he was alright.

140. In cross-examination, this witness admitted that during examination, Rajesh Jain was though semiconscious but was in a condition to reply to the queries. There were no marks of any injury of tying him with a rope or any other items. Rajesh had informed him that he was abducted from Khandwa on 24.08.2013. He also stated that he was given something forcefully through injection orally. Doctor admitted that in the discharge summary Ex.D-3, it is mentioned that patient was drowsy but following command. His blood pressure and heart beat was normal. In the discharge summary it is not mentioned that Rajesh Jain was semiconscious.

141. In paragraph 4, this witness admitted that in Ex.D-3 date of admission and date of discharge are blank. This witness also admitted that if physical and mental status of Rajesh would have been poor, then it would have been recorded in Ex.D-3. He further admitted that it is not mentioned in Ex.D-3 that Rajesh was administered any injection of poisonous substance.

142. This Doctor B.N. Singh was again examined in case of Dhananjay as PW-12 on 17.05.2018. This time he admitted that Rajesh was admitted by the



police at 11.30 AM. He was complaining of general weakness, vomiting, altered sensorium. His B.P. was 140/90, oxygen saturation 96%, blood sugar was 154, pulse 94 and other systems were normal. He complained of anxiety and gave history of kidnapping four days back. His all the vital organs were working normally but stated that some narcotic drug was given to him as he was under influence of that narcotic drug.

143. In cross-examination, Dr. B.N. Singh admitted that Rajesh Jain is not known to him personally, no identification mark is mentioned in the admission sheet, he was brought at 11.30 AM. This witness admitted that whether Rajesh Jain was under influence of any intoxicating substance was not tested. Doctor further admitted, in paragraph 9, that Rajesh had informed him that whenever he used to gain consciousness, he was administered a tablet, but this is contrary to the statement of Rajesh Jain (PW-1). Rajesh had informed the Doctor that he was suffering from diabetes, mellitus type-II. Doctor B.N. Singh admitted in paragraph 9 that he is stating for the first time in regard to administration of tablet.

144. In paragraph 11, this Doctor admitted that one tablet will not keep a person unconscious for four days. Doctor B.N. Singh also admitted that as to



whether a patient is fully conscious or not is an opinion of a specialist, but actual status can be given only after investigation.

145. In the present case, there is no material available on record to show that any investigation was carried out in this behalf. In Ex.D-1 time of arrival of the patient is mentioned as 10:50 AM on 28.08.2013 and time of examination is mentioned as 11:00 AM. This patient was accompanied by Nandram, Head Constable, DRP Line, Khandwa. It is mentioned that patient was brought in by police in a drowsy state. There are no visible external injuries. His breathing was found to be spontaneous, airway was patent. Patient was reported to be in a drowsy state and not unconscious. There is a difference between drowsiness and unconsciousness state.

146. There is contradiction in the police information for MLC, Ex.D-2, in which time of arrival is mentioned as 12:14 PM whereas in Ex.D-1 which is consent of medico legal examination, time is mentioned as 10:50 AM. Admittedly, there are no identifying marks mentioned on Ex.D-1. Provisional diagnoses is mentioned as altered sensorium. In Ex.D-3, which is the discharge card, neither any date of discharge is mentioned nor date of admission is mentioned. Even time of admission and discharge is not mentioned. However, it is mentioned that patient was admitted in ICU, investigated and managed



conservatively. Patient gradually improved and now hemodynamically stable. Police and patient want discharge on request and patient is being discharged on request. Condition at discharge is mentioned as conscious/oriented.

147. Therefore, it is evident that there being a difference between drowsiness and unconscious especially in view of use of terminology, drowsy in the admission card Ex.D-1 and not as unconscious, besides use of terminology altered sensorium which is a medical condition where a person ability to think clearly, concentrate or be aware of their surrounding is reduced and its signifies a disturbance in consciousness appearing as confusion. Causes are diverse and can include infections, drug over dose, withdrawal, metabolic disorders like, low blood sugar, head trauma, dehydration and various other illnesses or deficiencies. It is necessary that a medical evaluation is made to treat the underline cause, it cannot be said that Rajesh Jain was administered some poisonous or stupefying substance. There is contradiction in his evidence. After having stated that he was administered something orally through mouth at the time of his abduction in a car at Indore, he gained consciousness after four days, whereas Dr. B.N. Singh in his cross-examination, stated that patient informed him that he was administered tablets as and when he used to gain consciousness, a fact which is not mentioned



either in Ex.D-1 or D-3, there is no corroboration for prove the charge under Section 328 of IPC.

148. Section 324 of IPC is an essential element of intent to cause hurt, to commit or facilitate committing offence or knowledge that hurt would be caused. Firstly, there is no report of administration of any poison. There is no material to say that any drug was administered. There is no recovery of any medicine from the car in which Rajesh was abducted or from the house at Faridabad from where Rajesh was recovered and there were no injuries on the body of the Rajesh. Dr. B.N. Singh admitted that drug once administered could not have kept him unconscious for four days. Rajesh himself admitted that he was administered drug only once in the car. There is no evidence of Rajesh Jain (PW-1) saying that he was administered drugs repeatedly as and when he gain consciousness. Rajesh Jain admitted that he cannot say as to who had administered drug or stupefying or intoxicating substance or unwholesome drug, and then intention to cause hurt is also not proved. A diabetic patient after administration of a substance to render unconscious for four days would not have shown blood sugar level of 154 as mentioned by the treating doctor. Then, when prosecution has failed to establish that the accused administered or cause the victim to take a substance and that substance was a poison, or any stupefying or intoxicating or unwholesome drug



and that the accused administered or cause the victim to take it with the intent to cause hurt or with the knowledge that thereby hurt would be caused or that the accused intended to commit or facilitate the commission of an offence being not proved, charge under Section 328 or 328/149 of IPC cannot be sustained in the eyes of law and, therefore, conviction under Section 328 or 328/149 of IPC is also required to be set aside and is hereby set aside.

149. As far as conviction of the accused, namely, **Sudhir @ Rajusingh Bhadoria, Onkarsingh @ Setthi, Mohammad Inam @ Haji and Ripusudan @ Rajesh Goutam** under Section 5 of the Explosive Substances Act and Section 25(1-B)(a) of Arms Act is concerned, prosecution has been able to establish that charge beyond reasonable doubt, therefore, that does not call for any interference.

150. As far as charge under Section 364-A or 364-A/149 read with Section 120-B of IPC is concerned, Section 120-B of IPC deals with punishment for criminal conspiracy. The principle of sentencing under Section 120-B is that when offence abated is shown to have been committed as a result of the abatement, the abator should be punished with the imprisonment provided for the principle offence and no separate sentence need be recorded under Section 120-B of IPC, as held by Madras High Court in **State Vs. Savitri, 1976 Cri LJ 37**.



Therefore, it is to be first examined that whether charge under Section 364-A is made out or not. The necessary ingredients to establish a charge under Section 364-A of IPC are that the accused kidnapped or abducted a person; or that the accused kept such person under his detention; that the accused threatens to cause death or hurt to such person or causes death or hurt to him; that the accused did commit so to compel that person to do or abstain from doing any act or to pay a ransom. It is settled law that prosecution is required to prove all the essential ingredients.

151. Whereas to establish an offence under Section 365 of IPC prosecution is required to bring home that the accused kidnapped or abducted any person; and that he did so with the intent to cause that person to be confined secretly and wrongfully. Prosecution is required to bring home the ingredients of Section 364 of IPC by deceitful means to induce the victim to go from one place to another. In the present case, aspect of ransom as argued by learned counsel for the appellants and one of the appellant himself is a grey area.

152. Rajeev Jain (PW-2), who lodged FIR stated that on 24.08.2013, had received a call on his landline number when he had heard his brother's voice calling him Guddu, when phone was taken by somebody else and he informed him that his brother was kidnapped and asked him to keep a sum of Rs.5 crores



ready. Before he could say anything phone was disconnected, then when he dialed phone of Rajesh, it was switched off, then he had called his elder brother Rajneesh and had given intimation in regard to his kidnapping and demand of ransom. Thereafter, he had called Santosh Jain, who had accompanied Rajesh to Indore when Santosh informed that he too received information in regard to abduction of Rajesh. It is informed that Dhananjay Solanki asked them to keep a sum of Rs.5 crores ready as a ransom.

153. Rajeev Jain (PW-2) admitted that incident took place at Indore and his brother was not abducted at Khandwa.

154. Rajesh Jain (PW-1) admitted that after meeting bosses of Dinesh Sonlanki on a bypass road who were waiting in a white colour car near hotel Raddisson. Dinesh Solanki @ Arun Tiwari had taken car keys to park his car by side. He stated that persons sitting in the car had put revolvers around him and demanded Rs.5 crores. There is inconsistency in his statements as pointed by learned counsel for the appellants and the appellant appearing in person. Inasmuch as, this witness admitted in paragraph 37 that Rajeev Shrivastava and Dhananjay Solanki had not accompanied him and his brothers, Santosh Jain, Shyam Soni and Rajesh Pareek while travelling to Indore. He admitted that after reaching Indore at about 10:30-11:00 he had not met Dhananjay Solanki and



Rajeev Shrivastava. Between 12.30 and 1:00, they had met Rajeev Shrivastava and Dhananjay Solanki near hotel Radisson. They had met one counsel Shri Vinay Jhalawat who had examined the papers.

155. In paragraph 40, he admits that no incident took place at Khandwa though he improvised and on his own stated that planning was started at Khandwa.

156. In paragraph 45, this witness admits that he does not remember as to who had sought ransom from him. On his own he stated that he was nervous but conscious.

157. In paragraph 46, he admits that when Santosh Jain had called him then Rajesh was having his own mobile and he had received the call and had informed Santosh that he has been trapped and asked him to come soon. This witness admitted that when he had called Rajeev and called him as Guddu when his mobile was snatched. He admitted that he cannot say as to which of the person demanded ransom. This witness stated that when he had called Rajeev Jain (PW-2), then ransom of Rs.5 crores was sought, whereas in the FIR, Ex.P-4, which is authored by Rajeev Jain, it is mentioned that when he was at shop then at 6:30 PM he had received a call on his landline number when an unknown person stated that his brother has been kidnapped and do not call the police, wait



for another call, before he could ask anything phone was cut. He had tried to contact on mobile number of Rajesh bearing number 9826047721 but that mobile was switched off, then he had called his elder brother Rajneesh and Santosh. When Santosh informed that he too had received intimation of kidnapping of Rajesh. Santosh informed that when he had called Dhananjay Solanki then he had informed Santosh that Rajesh was kidnapped and demanded ransom of Rs.5 crores. Date of this FIR is 24.08.2013. This is contrary to the prosecution story as developed on behalf of Rajesh Jain (PW-1).

158. Santosh (PW-3), in paragraph 8, of his cross-examination stated that when he called Rajesh Jain then from other side he heard voice of the accused Dhananjay @ Dinesh Singh. It is admitted fact that Dhananjay was not in the car in which Rajesh was kidnapped. It is also stated by Santosh that he could not understand as to what was being said, therefore, he had given phone to Shyam Soni and Shyam Soni was informed that Rajesh was abducted and ransom of Rs.5 crores was sought. But this fact of Shyam Soni informing Santosh (PW-3) is missing in his evidence.

159. In paragraph 15 of cross-examination, Santosh admits that Shyam Soni had not informed him that ransom was sought by Dhananjay but he had



only stated that a sum of Rs.5 crores was being sought and they asked not to report the matter to the police.

160. Shyam Soni (PW-5) in paragraph 8, stated that he, Rajesh Pareek and Santosh Jain had reached Sayaji hotel when he tried to contact Dhananjay @ Dinesh Singh@ Arun on his phone on two-three occasions but when phone was switched off, then they had a doubt when Santosh Jain had called Rajesh Jain. Phone of Rajesh Jain was switched off. Thereafter Rajesh Pareek dialed phone of the accused which was switched off. After sometime, Santosh Jain had called Rajesh Jain when phone got connected and Rajesh Jain stated that he was trapped. When Santosh could not understand what was being said, then he had given phone to Shyam, when Shyam was informed in somebody's voice that Rajesh was kidnapped and demand of Rs.5 crores was made.

161. When this evidence is examined in the light of the evidence of Rajesh, then there are several contradictions in the story of prosecution. Rajesh Jain (PW-1) stated in paragraph 4 that when phone rang then he had picked up the phone, phone was from Santosh Jain. He asked Santosh to come soon saying that he has been trapped. Then person sitting in the car had snatched his phone and dialed number of his residence at Khandwa, then phone was picked by Rajeev Jain. Rajesh called Guddu Guddu twice, in the meanwhile, his phone was



snatched by somebody sitting in the car informed Rajeev Jain that his brother was kidnapped and demanded ransom of Rs.5 crores. Thus, as per the statement of Rajesh Jain, there was no demand of ransom from Santosh, who stated that he had given his phone to Shyam Soni, who had heard demand of ransom. Rajeev Jain (PW-2) admits that no demand of ransom was made from him, as is evident from the FIR Ex.P-4/C but demand was made from Shyam when Santosh had called Rajesh.

162. Thus, in the light of the aforesaid contradictions, prosecution has failed to prove demand of ransom beyond reasonable doubt.

163. When these facts are examined, then in the light of the judgment of Hon'ble Supreme Court in **Neeraj Sharma Vs. State of Chhattisgarh with Ashwani Kumar Yadav Vs. State of Chhattisgarh, (2024) 3 SCC 125**, absence of proof of demand of ransom it cannot be said that ingredients of Section 364-A are satisfied. Therefore, Hon'ble Supreme Court convicted the accused under Section 364 of IPC rather than 364-A of IPC.

164. Hon'ble Supreme Court in the case of **Ravi Dhingra Vs. State of Haryana, (2023) 6 SCC 76** held in paragraphs 23 to 26 which read as under:-

23. This Court, notably in *Anil v. Admn. of Daman & Diu, Daman* [*Anil v. Admn. of Daman & Diu, Daman*, (2006) 13 SCC 36 : (2008) 1 SCC (Cri) 72] ("*Anil*"), *Vishwanath Gupta v. State of*



Uttaranchal [Vishwanath Gupta v. State of Uttaranchal, (2007) 11 SCC 633 : (2008) 2 SCC (Cri) 62] (“*Vishwanath Gupta*”) and *Vikram Singh v. Union of India [Vikram Singh v. Union of India, (2015) 9 SCC 502 : (2015) 4 SCC (Cri) 213]* (“*Vikram Singh*”) has clarified the essential ingredients to order a conviction for the commission of an offence under Section 364-A IPC in the following manner:

23.1. In *Anil [Anil v. Admn. of Daman & Diu, Daman, (2006) 13 SCC 36 : (2008) 1 SCC (Cri) 72]* , the pertinent observations were made as regards those cases where the accused is convicted for the offence in respect of which no charge is framed. In the said case, the question was whether appellant therein could have been convicted under Section 364-AIPC when the charge framed was under Section 364 read with Section 34IPC. The relevant passages which can be culled out from the said judgment of the Supreme Court are as under : (SCC pp. 53-54, paras 55-56)

55. The ingredients for commission of offence under Sections 364 and 364-A are different. Whereas the intention to kidnap in order that he may be murdered or may be so disposed of as to be put in danger as murder satisfies the requirements of Section 364 of the Penal Code, for obtaining a conviction for commission of an offence under Section 364-A thereof it is necessary to prove that not only such kidnapping or abetment has taken place but thereafter the accused threatened to cause death or hurt to such person or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt or causes hurt or death to such person in order to compel the Government or any foreign State or international inter-governmental organisation or any other person to do or abstain from doing any act or to pay a ransom.



56. It was, thus, obligatory on the part of the learned Sessions Judge, Daman to frame a charge which would answer the description of the offence envisaged under Section 364-A of the Penal Code. It may be true that the kidnapping was done with a view to get ransom but the same should have been put to the appellant while framing a charge. The prejudice to the appellant is apparent as the ingredients of a higher offence had not been put to him while framing any charge.”

23.2. In *Vishwanath Gupta* [*Vishwanath Gupta v. State of Uttaranchal*, (2007) 11 SCC 633 : (2008) 2 SCC (Cri) 62] , it was observed as under : (SCC pp. 636-37, paras 8-9)

“8. According to Section 364-A, whoever kidnaps or abducts any person and keeps him in detention and threatens to cause death or hurt to such person and by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt, and claims a ransom and if death is caused then in that case the accused can be punished with death or imprisonment for life and also liable to pay fine.

9. The important ingredient of Section 364-A is the abduction or kidnapping, as the case may be. Thereafter, a threat to the kidnapped/abducted that if the demand for ransom is not met then the victim is likely to be put to death and in the event death is caused, the offence of Section 364-A is complete. There are three stages in this section, one is the kidnapping or abduction, second is threat of death coupled with the demand of money and lastly when the demand is not met, then causing death. If the three ingredients are available, that will constitute the offence under Section 364-A of the Penal Code. Any of the three ingredients can take place at one place or at different places.”



23.3. In *Vikram Singh* [*Vikram Singh v. Union of India*, (2015) 9 SCC 502 : (2015) 4 SCC (Cri) 213], it was observed as under : (SCC pp. 522-23, para 25)

“25. ... Section 364-AIPC has three distinct components viz. (i) the person concerned kidnaps or abducts or keeps the victim in detention after kidnapping or abduction; (ii) threatens to cause death or hurt or causes apprehension of death or hurt or actually hurts or causes death; and (iii) the kidnapping, abduction or detention and the threats of death or hurt, apprehension for such death or hurt or actual death or hurt is caused to coerce the person concerned or someone else to do something or to forbear from doing something or to pay ransom. These ingredients are, in our opinion, distinctly different from the offence of extortion under Section 383 IPC. The deficiency in the existing legal framework was noticed by the Law Commission and a separate provision in the form of Section 364-AIPC proposed for incorporation to cover the ransom situations embodying the ingredients mentioned above.”

It is necessary to prove not only that such kidnapping or abetment has taken place but that thereafter, the accused threatened to cause death or hurt to such person or by his conduct gave rise to a reasonable apprehension that such person may be put to death or hurt or cause hurt or death to such person in order to compel the Government or any foreign State or international, inter-governmental organisation or any other person to do or abstain from doing any act or to pay a ransom.

24. Most recently, this Court in *Sk. Ahmed* [*Sk. Ahmed v. State of Telangana*, (2021) 9 SCC 59 : (2021) 3 SCC (Cri) 394] has emphasised that Section 364-AIPC has three stages or components, namely,

(i) kidnapping or abduction of a person and keeping them in detention;



(ii) threat to cause death or hurt, and the use of kidnapping, abduction, or detention with a demand to pay the ransom; and

(iii) when the demand is not met, then causing death.

25. The relevant portions of the said judgment are extracted as under : (*SK Ahmed case* [*Sk. Ahmed v. State of Telangana*, (2021) 9 SCC 59 : (2021) 3 SCC (Cri) 394] , SCC pp. 67-68 & 75-76, paras 12-15 & 33)

“12. We may now look into Section 364-A to find out as to what ingredients the section itself contemplate for the offence. When we paraphrase Section 364-A following is deciphered:

(i) ‘Whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction’

(ii) ‘and threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt,

(iii) or causes hurt or death to such person in order to compel the Government or any foreign State or international inter-governmental organisation or any other person to do or abstain from doing any act or to pay a ransom’

(iv) ‘shall be punishable with death, or imprisonment for life, and shall also be liable to fine.’

The first essential condition as incorporated in Section 364-A is ‘whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction’. The second condition begins with conjunction “and”. The second condition has also two parts i.e. (a) threatens to cause death or hurt to such person or (b) by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt. Either part of above condition, if



fulfilled, shall fulfil the second condition for offence. The third condition begins with the word “or” i.e. or causes hurt or death to such person in order to compel the Government or any foreign State or international inter-governmental organisation or any other person to do or abstain from doing any act or to pay a ransom. Third condition begins with the words ‘or causes hurt or death to such person in order to compel the Government or any foreign State to do or abstain from doing any act or to pay a ransom’. Section 364-A contains a heading “Kidnapping for ransom, etc.” The kidnapping by a person to demand ransom is fully covered by Section 364-A.

13. We have noticed that after the first condition the second condition is joined by conjunction “and”, thus, whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction and threatens to cause death or hurt to such person.

14. The use of conjunction “and” has its purpose and object. Section 364-A uses the word “or” nine times and the whole section contains only one conjunction “and”, which joins the first and second condition. Thus, for covering an offence under Section 364-A, apart from fulfilment of first condition, the second condition i.e. ‘and threatens to cause death or hurt to such person’ also needs to be proved in case the case is not covered by subsequent clauses joined by “or”.

15. The word “and” is used as conjunction. The use of word “or” is clearly distinctive. Both the words have been used for different purpose and object. *Crawford on Interpretation of Law* while dealing with the subject “disjunctive” and “conjunctive” words with regard to criminal statute made following statement:



‘... The court should be extremely reluctant in a criminal statute to substitute disjunctive words for conjunctive words, and vice versa, if such action adversely affects the accused.’

33. After noticing the statutory provision of Section 364-A and the law laid down by this Court in the abovenoted cases, we conclude that the essential ingredients to convict an accused under Section 364-A which are required to be proved by the prosecution are as follows:

- (i) Kidnapping or abduction of any person or keeping a person in detention after such kidnapping or abduction; and
- (ii) threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt or;
- (iii) causes hurt or death to such person in order to compel the Government or any foreign State or any Governmental organisation or any other person to do or abstain from doing any act or to pay a ransom.

Thus, after establishing first condition, one more condition has to be fulfilled since after first condition, word used is “and”. Thus, in addition to first condition either Condition (ii) or (iii) has to be proved, failing which conviction under Section 364-A cannot be sustained.”

26. Thus, this Court in *Sk. Ahmed* [*Sk. Ahmed v. State of Telangana*, (2021) 9 SCC 59 : (2021) 3 SCC (Cri) 394] set aside the conviction under Section 364-AIPC and modified the same to conviction under Section 363, for the reason that the additional conditions were not met by observing as follows : (SCC p. 78, para 42)



“42. The second condition having not been proved to be established, we find substance in the submission of the learned counsel for the appellant that conviction of the appellant is unsustainable under Section 364-AIPC. We, thus, set aside the conviction of the appellant under Section 364-A. However, from the evidence on record regarding kidnapping, it is proved that the accused had kidnapped the victim for ransom, demand of ransom was also proved. Even though offence under Section 364-A has not been proved beyond reasonable doubt but the offence of kidnapping has been fully established to which effect the learned Sessions Judge has recorded a categorical finding in paras 19 and 20. The offence of kidnapping having been proved, the appellant deserves to be convicted under Section 363. Section 363 provides for punishment which is imprisonment of either description for a term which may extend to seven years and shall also be liable to fine.”

165. Hon’ble Supreme Court in the case of **Sampath Kumar Vs. Inspector of Police, Krishnagiri, (2012) 4 SCC 124** has held that “motive alone cannot be a ground for conviction. In absence of any other circumstantial evidence, motive would not be sufficient to convict accused. On materials on record, there may arise some suspicion against appellant-accused, but suspicion, howsoever, strong cannot take the place of proof.”

166. Hon’ble Supreme Court in the case of **Musa Khan and Others Vs. State of Maharashtra, (1997) 1 SCC 733** has held that under Section 149 culpable liability does not arise from mere presence in the assembly. Nor does



participation in one incident lead to liability for consequences of all the incidents that the unlawful assembly may consequently indulge in. Liability of each individual accused is to be adjudged on facts.

167. Hon'ble Supreme Court in the case of **Sanichar Sahni Vs. State of Bihar, (2009) 7 SCC 198** has held that "charge of conspiracy cannot be sustained only against single person. It is held that if co-accused had been acquitted of charges of conspiracy cannot be sustained as one person alone could not be guilty of conspiracy because one cannot conspire with himself."

168. Hon'ble Supreme Court in **Topandas Vs. State of Bombay, AIR 1956 SC 33** has held that "if the prosecution case is that a criminal conspiracy was hatched between certain specified persons, and all of them having been charged under Section 120-B at a joint trial all except one are acquitted, conviction of the remaining one accused on that charge is illegal" and, in **Fakhruddin Vs. State of M.P., AIR 1967 SC 1326** has held that "the Offence of conspiracy cannot survive if all the other co-accused are acquitted unless there be proof that the accused had conspired with person or persons other than his co-accused."

169. It is evident that though charge under Section 364-A is not proved but chain of events starting from the fact that Dhananjay @ Dinesh Solanki @



Arun Tiwari had met Rajesh at Khandwa representing himself to be a representative of NHAI to strike a deal, Pradip @ Rajeev Shrivastava representing himself to be a official valuer, and then Dhananjay taking Rajesh to Indore though they travelled separately in the name of meeting his boss and thereafter taking him to a road near hotel Radisson to introduce his boss to Rajesh and then Rajesh being taken in car and thereafter taken to Faridabad from where he was recovered in the company of four persons namely, Sudhir Bhadoria, Onkarsingh @ Setthi, Mohammad Inam @ Haji and Ripusudan @ Rajesh Goutam which was freed by a team of police personnel under the leadership of Shri Vijay Singh Paraste points out towards two things –

- (i) there was an unlawful assembly of five or more persons.
- (ii) all the five accused were connected with each other and were acting for a common goal i.e. kidnapping of Rajesh.

170. Though prosecution has not been able to prove aspect of demand of ransom but ratio of law laid down in case of **Musa Khan and others (supra)** will not be applicable because submission made by Shri Arun Tiwari that participation in one incident is not sufficient to hold him culpably liable for the acts of the members of the unlawful assembly, when tested being in furtherance of the common object of the assembly to abduct Rajesh will not absolve



Dhananjay of his liability under Section 149 of IPC because it is not the case of Dhananjay that he had not introduced Rajesh to his boss.

171. Even the ratio of law laid down in the case of **Sampath Kumar (supra)** will not be applicable because motive of kidnapping is circumscribed with other evidences like, asking Rajesh to come to Indore to meet Sudhir Bhadoria and others to strike a land deal, then introducing Rajesh to the so called boss in front of Radisson hotel, then that boss making Rajesh to sit in the car and thereafter fleeing away to Faridabad from where Rajesh was recovered are sufficient circumstances to point out that ingredients of Section 365 of IPC are made out.

172. However, in terms of the law laid down by Supreme Court in **Ravi Dhingra (supra)**, we are of the opinion that as noted by Hon'ble Supreme Court that to cover the ingredients of Section 364-A, three stages or components, namely, (i) kidnapping or abduction of a person and keeping them in detention; (ii) threat to cause death or hurt and the use of kidnapping, abduction, or detention with a demand to pay the ransom; and (iii) when the demand is not met, then causing death, are not complete in the present case. Inasmuch as, Rajesh himself has admitted that he was never extended any threat to cause death or hurt and in fact he was not hurt and then there was no attempt to cause his



death and as has been noted by Hon'ble Supreme Court that after the first condition second condition is joined by conjunction "and" thus, whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction and threatens to cause death or hurt to such person, then use of conjunction "and" has its purpose and object and Section 364-A uses the word "or" nine times and the whole section contains only one conjunction "and", which joins the first and second condition. Thus, for covering an offence under Section 364-A, apart from fulfillment of first condition, the second condition i.e. 'and threatens to cause death or hurt to such person' also needs to be proved in case, the case is not covered by subsequent clauses joined by 'or'.

173. This Court has no hesitation to hold that since condition of conjunction are not fulfilled, there is no evidence to show that Rajesh Jain was either hurt or there was any threat of death or hurt, there was demand of any ransom, we are of the opinion that charge under Section 364-A will not be sustainable but charge under Section 365 of IPC has been proved by the prosecution beyond reasonable doubt, therefore, conviction and sentence of the appellants is altered from one under Section 364-A to Section 365 read with Section 120-B of IPC and they are sentenced to 7 years Rigorous Imprisonment



with Fine of Rs.10,000/- with default stipulation of 6 months Rigorous Imprisonment.

174. Accordingly, all the above appeals are partly allowed and the impugned judgments of learned trial Court is modified to the extent that –

(i) appellants, namely, Sudhir @ Rajsingh Bhadoria, **Pradip @ Rajeev Shrivastava**, Mohammad Inam @ Haji and Onkarsingh @ Setthi and Ripusudan @ Rajesh Goutam are acquitted from the charges under Sections 420, 328, 171 of IPC. However, their conviction and sentence under Section 473, 120-B of IPC, Section 5 of Explosive Substances Act and Section 25(1-B)(a) of Indian Arms Act is hereby maintained. They are convicted under Section 365 of IPC. Since, conviction and sentence of above appellants is altered from Section 364-A to Section 365 read with Section 120-B of IPC, therefore, they are sentenced to undergo 7 years Rigorous Imprisonment alongwith Fine of Rs.10,000/- with default stipulation of 6 months Rigorous Imprisonment each.

(ii) appellant Dhananjay @ Dinesh Singh @ Arun is acquitted from the charges under section 420, 328/149 of IPC. He is convicted under Section 365 read with Section 120-B of IPC. Since conviction and sentence of appellant Dhananjay @ Dinesh Singh @ Arun under Section 364-A/149 of IPC is altered to Section 365 read with Section 120-B of IPC, therefore, he is sentenced to



undergo 7 years Rigorous Imprisonment alongwith Fine of Rs.10,000/- with default stipulation of 6 months Rigorous Imprisonment.

175. Case property be disposed off as per the orders of the learned trial Court.

Record of the trial Court be sent back immediately.

(VIVEK AGARWAL)
JUDGE

(DEVNARAYAN MISHRA)
JUDGE

MTK