HIGH COURT OF MADHYA PRADESH

BENCH GWALIOR

DIVISION BENCH:

HON. SHRI JUSTICE SHEEL NAGU

&

HON. SHRI JUSTICE G.S. AHLUWALIA

Criminal Appeal No.125/2008

.....Appellant: Horam

Versus

.....Respondent: State of M.P.

Criminal Appeal No.145/2008

.....Appellants: Veera and another

Versus

.....Respondent: State of M.P.

Criminal Appeal No.158/2008

.....Appellant: Jagdish

Versus

.....Respondent: State of M.P.

&

Criminal Appeal No.314/2008

.....Appellant: Munesh

Versus

.....Respondent: State of M.P.

Shri Ashok Kumar Jain, Counsel for the appellants in Criminal Appeal Nos.125/2008, 145/2008 and 158/2008.

Shri Mahendra Chaudhary, Counsel for appellant in Criminal Appeal No.314/2008.

Shri J.M. Sahni, Public Prosecutor for the respondent/State.

Date of hearing : 27/10/2018

Date of Judgment : 31/10/2018

Whether approved for reporting : Yes

Law laid down:

Significant paragraphs:

J U D G M E N T
(31/10/2018)

Per Justice G.S. Ahluwalia,

This common judgment shall dispose of Cr.A. No.125/2008 filed by Horam, Cr.A. No.145/2008 filed by Veera and Ramhet, Cr.A. No.158/2008 filed by Jagdish and Cr.A. No.314/2008 filed by Munesh.

These appeals have been filed under Section 374 of Cr.P.C. challenging the judgment and sentence dated 7-1-2008 passed by IVth A.S.J., Morena, Distt. Morena in S.T. No.258/2000 by which the appellants have been convicted under Section 364-A of I.P.C. and have been sentenced to undergo the Life Imprisonment and a fine of Rs.50,000/- with default imprisonment. The appellant Jagdish has also been convicted under Section 25(1-B) (a) read with Section 3 of Arms Act and has also been sentenced to undergo the rigorous imprisonment of 3 years and a fine of Rs.5000/- with default imprisonment.

The prosecution story in short is that on 18-1-2000 an F.I.R., Ex.P.1, was lodged by Choudhary Singh (P.W.1) to the effect that today he along with other villagers had gone to attend the 13th day ceremony in the house of Hakim Singh. While they were coming back, Ram Prakash, Gayaram Singh, Kalicharan, Jasrath, Sultan Singh, Jagdish Singh, Rakesh Singh, Kaliyan Singh, Ramavtar Singh, Mataprasad, Ashok were ahead of him. About 12 unknown persons, out of which 7-8 persons were having guns waylaid them and took them to the forest area. He and Rajbahadur were watching the incident while hiding themselves. They thereafter, went to village and

informed the villagers and now he has come to lodge the F.I.R.

The police after recording the F.I.R., started investigation.

On 28-2-2000, all the abductees were freed by the appellants. The statements of the witnesses were recorded. The appellants were arrested, fire arms were seized and after holding the Test Identification Parade and completing the investigation, the police filed the charge sheet against the appellants for offence under Section 364-A of I.P.C. The appellants Veera and Ramhet were arrested after filing of the charge sheet. Test Identification Parade of the appellant Veera and Ramhet was also conducted and supplementary charge sheet was filed against them.

The Trial Court framed charge under Section 364-A of I.P.C. against all the appellants and also framed charge under Section 25(1-B)(a) of Arms Act against the appellant Jagdish. Charges against other co-accused persons were also framed.

The appellants and all other co-accused persons abjured their guilt and pleaded not guilty.

The Prosecution in order to prove its case, examined Choudhary Singh (P.W.1), Rajbahadur (P.W.2), Ramgyan (P.W.3), Chhotelal (P.W.4), Kalyan Singh (P.W.5), Rakesh (P.W.6), Jagdish (P.W.7), Sultan Singh (P.W.8), Gayaram (P.W.9), Kalicharan (P.W.10), Vishambhar (P.W.11), Ram Prakash son of Vijayram (P.W.12), R.P. Samoliya (P.W.13), Vishambhar (P.W.14), Ram Prakash son of Ramdeen (P.W.15), Mata Prasad (P.W.16), Ramavtar (P.W.17), M.P. Shukla (P.W.18), Ramjilal (P.W.19), Dashrath (P.W.20), Ashok (P.W.21), Ram Prakash (P.W.22), Munna Khan (P.W.23), Kartar Singh (P.W.24), Manmohan Singh Kushwaha (P.W.25) and Kalyan Singh (P.W.26). The appellants and the other co-accused persons did not examine any witness in their defence.

The Trial Court by judgment and sentence dated 7-1-2008, passed in S.T. No.258/2000, convicted the appellants for offence under Section under Section 364-A of I.P.C. and sentenced to undergo the Life Imprisonment and a fine of Rs.50,000/- with default imprisonment. The appellant Jagdish has also been convicted under Section 25(1-B)(a) read with Section 3 of Arms Act and has also been sentenced to undergo the rigorous imprisonment of 3 years and a fine of Rs.5000/- with default imprisonment.

The co-accused Narendra Mishra, Jagdish son of Kok Singh, Virendra Singh, Sanman, Ramveer Singh and Pappu were acquitted by the Trial Court, whereas the co-accused Mahesh son of Gulab Singh, Ummed Singh son of Arjun Singh Gurjar and Kalyan died during the pendency of the appeal. The co-accused Pappu son of Vedari and Siyaram are absconding.

Challenging the conviction and sentence awarded by the Trial Court, it is submitted by the counsel for the appellants that the entire case is based on the identification of the appellants and the prosecution has failed to prove the identification of the appellants beyond reasonable doubt. Further, the prosecution has failed to prove the demand of ransom and payment thereof. In fact, the witnesses were abducted for restraining them and others from participating in the ongoing elections and thus, the offence would fall within the purview of Section 365 of I.P.C. It is further submitted that as some of the accused persons have been acquitted by the Trial Court, therefore, the same benefit of doubt is liable to be extended to the appellants, because when a witness has been found unreliable in respect of some of the accused, then he cannot be relied upon for the remaining accused persons also.

Per contra, it is submitted by the counsel for the State

that the appellants were not only identified by the witnesses in the Test Identification Parade, which was conducted by the police within a reasonable time from the date of their arrest, but the appellants have also been identified by the witnesses in the dock. It is further submitted that the demand of ransom itself is sufficient for making out an offence under Section 364-A of I.P.C. It is further submitted that the prosecution has proved the guilt of the appellants beyond reasonable doubt. It is further submitted that the accused who were not identified by the witnesses have already been acquitted by the Trial Court.

Heard the learned Counsel for the parties.

The appellants have been convicted by the Trial Court on the basis of their identification by the witnesses in the respective Test Identification Parade conducted by the police as well as in the Dock Identification.

The Supreme Court in the case of **Mukesh Vs. State (NCT of Delhi)** reported in **(2017) 6 SCC 1** has held as under :

> "**142.** Criticising the TIP, it is urged by the learned counsel for the appellants and Mr Hegde, learned Amicus Curiae, that refusal to participate may be considered as circumstance but it cannot by itself lead to an inference of guilt. It is also argued that there is material on record to show that the informant had the opportunity to see the accused persons after they were arrested. It is necessary to state here that TIP does not constitute substantive evidence. It has been held in *Matru* v. *State of U.P.* that identification test is primarily meant for the purpose of helping the investigating agency with an assurance that their progress with the investigation of an offence is proceeding on the right lines.
>
> **143.** In *Santokh Singh* v. *Izhar Hussain*, it has been observed that the identification

can only be used as corroborative of the statement in court.

144. In *Malkhansingh* v. *State of M.P.*, it has been held thus: (SCC pp. 751-52, para 7)

"*7*. … The identification parades belong to the stage of investigation, and there is no provision in the Code of Criminal Procedure which obliges the investigating agency to hold, or confers a right upon the accused to claim a test identification parade. They do not constitute substantive evidence and these parades are essentially governed by Section 162 of the Code of Criminal Procedure. Failure to hold a test identification parade would not make inadmissible the evidence of identification in court. The weight to be attached to such identification should be a matter for the courts of fact. …"

And again: (SCC p. 755, para 16)

"*16*. It is well settled that the substantive evidence is the evidence of identification in court and the test identification parade provides corroboration to the identification of the witness in court, if required. However, what weight must be attached to the evidence of identification in court, which is not preceded by a test identification parade, is a matter for the courts of fact to examine. …"

145. In this context, reference to a passage from *Visveswaran* v. *State*—would be apt. It is as follows: (SCC p. 78, para 11)

"*11*. … The identification of the accused either in test identification parade or in Court is not a sine qua non in every case if from the circumstances the guilt is otherwise established. Many a time, crimes are committed under the cover of darkness when none is able to identify the accused. The commission of a crime can be proved also by circumstantial evidence. …"

146. In *Manu Sharma* v. *State (NCT of Delhi)*, the Court, after referring to *Munshi Singh Gautam* v. *State of M.P.*, *Harbajan*

> *Singh* v. *State of J&K* and *Malkhansingh*, came to hold that the proposition of law is quite clear that even if there is no previous TIP, the court may appreciate the dock identification as being above board and more than conclusive."

As already held, the entire case is based on the circumstances of identification of the appellants, demand of ransom and payment of ransom amount.

First of all, this Court would consider the case of each and every appellant separately so as to find out that:

> "Whether the appellants have been duly identified by the witnesses or not?"

<u>Identification of Appellants</u>:

(i) Munesh

Munesh was arrested by the police on 17-4-2000 vide arrest memo Ex. P.11 and the Test Identification Parade was conducted on 10-5-2000, Ex. P.6 by R.P. Samoliya (P.W.13). He was identified by Ram Prakash son of Vijayram (P.W.12), whereas the other prosecution witnesses could not identify him. Ramprakash son of Vijayram (P.W.12) also identified the appellant Munesh in the Court. An argument was advanced by the counsel for the appellants that Kalyan (P.W.5) has stated in his cross examination that the accused persons were shown to him in the police station, therefore, the identification of the appellants is vitiated. The submission made by the counsel for the appellants cannot be accepted for two reasons; firstly, the appellant Munesh was not put for identification from Kalyan (P.W.5) and further in para 7, Kalyan (P.W.5) immediately clarified that as he could not understand the difference between jail and police station, therefore, his previous answer was incorrect. No other circumstance was pointed out by the counsel for the appellants, which could make the identification of this appellant doubtful. Accordingly, it is held that the

appellant Munesh was identified by Ramprakash son of Vijayram (P.W.12) in the dock and the dock identification was preceded by Test Identification Parade, Ex.P.6.

(ii) Horam

The appellant Horam was arrested on 22-5-2000 (wrongly mentioned as 22-2-2000 in the judgment), vide arrest memo Ex.P.25 and was put for Test Identification Parade on 21-6-2000, Ex. P.5. He was identified by Ram Prakash son of Ramdeen (P.W.15), Ram Prakash son of Vijayram (P.W.12), Jagdish (P.W.7) and other prosecution witnesses could not identify him. Jagdish (P.W.7) has stated that the accused Ummed, Mahesh, Pappu, appellant Horam and Munesh are known to him by their names and further stated that the accused persons present in the Court are known to him. However, in Para 12 of his examination-in-chief, he identified the appellant Jagdish, the appellant Munesh, Mahesh son of Gulab and Pappu son of Vedari. From the order sheet of the Trial Court, it is clear that on 24-7-2002, the appellant Horam was not present in the Court. The Trial Court had directed the appellant Horam to remain present on 25-7-2002 and 26-7-2002. On 25-7-2002, the appellant Horam did not appear before the Trial Court and his application under Section 317 of Cr.P.C. was allowed. On 24-7-2002, a part of the Examination-in-chief of Jagdish (P.W.7) was recorded and the remaining part of examination-in-chief and cross examination was recorded on 25-7-2002. On 25-7-2002 also, the appellant Horam did not appear before the Trial Court and an application under Section 317 of Cr.P.C. was filed, which was allowed by the Trial Court. Under these circumstances, when the appellant knew that Jagdish (P.W.7) shall be examined and cross examined and the question of dock identification would arise, even then, if the appellant Horam chose to remain absent and

in view of the specific statement made by Jagdish (P.W.7) that the appellant Horam is known to him and he had identified the appellant Horam in T.I.P., and when the appellant Horam did not make himself available for dock identification in spite of specific direction given by the Trial Court, this Court is of the considered opinion that there is a substantive evidence of identification of Horam by the witness in the Court.

Further, this appellant was identified by Ram Prakash son of Vijayram (P.W 12) in the Test Identification Parade, Ex.P.5. Ram Prakash (P.W.12) has stated in his examination-in-chief that Horam (who was not present in the Court on 26-7-2002 when the examination-in-chief of this witness was being recorded) is known to this witness. However, Ram Prakash son of Ramdeen (P.W.15) could identify only appellants Jagdish, Pappu and Mahesh in the Dock. From the order sheet of the Trial Court, it is clear that on 24-7-2002, the Trial Court had directed the appellant Horam to remain present on 25-7-2002 and 26-7-2002. On 25-7-2002, the appellant Horam did not appear before the Trial Court and his application under Section 317 of Cr.P.C. was allowed. On 25-7-2002, a part of the examination-in-chief of Ram Prakash son of Vijay Ram (P.W.12) was recorded and the remaining part of examination-in-chief and cross examination was recorded on 26-7-2002. On 26-7-2002 also, the appellant Horam did not appear before the Trial Court and an application under Section 317 of Cr.P.C. was filed, which was allowed by the Trial Court. Under these circumstances, when the appellant knew that Ram Prakash son of Vijayram (P.W.12) shall be examined and cross examined and the question of dock identification would arise, even then, if the appellant Horam chose to remain absent, then in view of the specific statement made by Ram Prakash son of Vijayram (P.W.12) that the appellant Horam is known to him, this Court

is of the considered opinion that there is a substantive evidence of identification of Horam, by the witness in the Court. Although Sultan (P.W.8) had identified the appellant Horam in the dock, but as he could not identify the appellant Horam in the Test Identification Parade, Ex. P.5, conducted by the police, therefore, the identification of the appellant Horam by Sultan (P.W.8) cannot be relied upon. However, considering the evidence of Ram Prakash son of Vijayram (P.W.12), Jagdish (P.W.7), it is held that the appellant Horam was duly identified by the witnesses.

The Supreme Court in the case of Daya Singh Vs. State of Haryana reported in **(2001) 3 SCC 468** has held as under :

> "It is to be stated that in such a situation, this Court in *Suraj Pal* v. *State of Haryana* held that substantive evidence identifying the witness is his evidence made in the Court and if the accused in exercise of his own volition declined to submit for test parade without any reasonable cause, he did so at his own risk for which he cannot be heard to say that in the absence of test parade, dock identification was not proper and should not be accepted, if it was otherwise found to be reliable. The Court observed that "it is true that they could not have been compelled to line up for test parade. But they did so on their own risk for which the prosecution could not be blamed for not holding the test parade". In that case also, the Court disbelieved the justification given by the accused for not participating in the identification parade on the ground that the accused were shown by the police to the witnesses. Same is the position in the present case."

In the present case, the same analogy can be applied. When the accused knowing fully well that the question of dock identification would arise, decides not to appear before the Trial Court, then an adverse inference has to be drawn against

the appellant/accused.

(iii) Veera

In the present case, the appellant Veera was absconding therefore, charge sheet was filed against him under Section 299 of Cr.P.C. However, later on it appears that he was arrested (Arrest memo has not been proved and is not marked as an exhibit) and the Test Identification Parade was conducted on 22-7-2000, Ex. P.19. In the Test Identification Parade, the appellant Veera was identified by Ram Prakash son of Vijayram (P.W.12), Gayaram (P.W. 9) and Ramavtar (P.W.17). However, this appellant was identified by Ram Prakash son of Vijayram (P.W.12) in the dock, whereas Gayaram (P.W.9) and Ramavtar (P.W.17) could not identify this witness in the dock. Thus, it is clear that this appellant was duly identify by Ram Prakash son of Vijayram (P.W.12) in the Test Identification Parade, Ex. P.19, as well as in the dock. Accordingly, the identity of the appellant Veera is also established. The arrest memo of the appellant Veera has not been proved and exhibited by the prosecution, but the Test Identification of the appellant Veera has not been challenged on the ground of delay. Furthermore, it is well established principle of law that even an unexhibited prosecution document can be looked into, in case if it favours the appellant. Therefore, in order to find out that whether there was any delay in holding the Test Identification Parade by the Police or not, the unexhibited arrest memo of the appellant Veera was seen by the Court.

(iv) Jagdish

The appellant Jagdish was arrested on 22-3-2000 vide arrest memo Ex.P.12 and the Test Identification Parade, Ex.P.8 was conducted on 10-4-2000. The appellant Jagdish was identified by Kalyan (P.W.5), Jagdish (P.W.7), Sultan (P.W.8),

Gayaram (P.W.9), Ram Prakash son of Vijayram (P.W.12), Ram Prakash son of Ramdeen (P.W.15), Mataprasad (P.W.16), Ramavtar (P.W.17) and Ashok (P.W.21). The appellant Jagdish was identified in dock by Choudhary Singh (P.W.1), Jagdish (P.W.7), Sultan (P.W.8), Gayaram (P.W.9), Ramprakash son of Vijayram (P.W.12), Ramprakash son of Ramdeen (P.W.15) and Ashok (P.W.21). The appellant Jagdish was not put for Test Identification Parade by the police from Choudhary Singh (P.W.1) for the simple reason that in the F.I.R., Ex.P.1, this witness had claimed that he had seen the incident, while hiding himself, and has also stated in his cross examination that as he could not identify the accused persons, therefore, they were not named in the F.I.R.. Therefore, identification of Jagdish by Choudhary Singh (P.W.1) cannot be relied upon, however, considering the fact that the appellant Jagdish was also identified by other prosecution witnesses in the T.I.P. as well as in the Court, therefore, the identification of Jagdish is held to be proved.

(v) Ramhet

In the present case, the appellant Ramhet was absconding, therefore, charge sheet was filed against him under Section 299 of Cr.P.C. However, later on it appears that he was arrested (Arrest memo has not been proved and is not marked as an exhibit) and the Test Identification Parade was conducted on 27-7-2000, Ex. P.18. In the Test Identification Parade, this appellant was identified by Ramjilal (P.W.19), Ram Prakash son of Vijayram (P.W.12), Sultan Singh (P.W.8) and Ramavtar (P.W. 17). However, this appellant was identified by Ram Prakash son of Vijayram (P.W.12), Sultan Singh (P.W.8) in the dock, whereas Sultan Singh (P.W.8), Ramjilal (P.W.19) and Ram avtar (P.W. 17) could not identify this witness in the dock. Thus, it is clear that this appellant was duly identify by Ram

Prakash son of Vijayram (P.W.12) in the Test Identification Parade, Ex. P.18 as well as in the Dock. Accordingly, the identity of the appellant Ramhet is also established. The arrest memo of the appellant Ramhet has not been proved and exhibited by the prosecution, but the Test Identification of the appellant Ramhet has not been challenged on the ground of delay. Furthermore, it is well established principle of law that even an unexhibited prosecution document can be looked into, in case if it favours the appellant. Therefore, in order to find out that whether there is any delay in holding the Test Identification Parade by the Police or not, the unexhibited arrest memo of the appellant Ramhet was seen by the Court.

There is one more aspect of the matter, which cannot be lost sight of. The prosecution witness Jagdish (P.W.7) was examined on 24-7-2002, Sultan Singh (P.W.8) was examined on 25-7-2002, Gayaram (P.W. 9) was examined on 25-7-2002, Ram Prakash son of Ramdeen (P.W.15) was examined on 11-12-2002, Mataprasad (P.W.16) was examined on 10-11-2006, Ramavtar (P.W.17) was examined on 10-11-2006, Ramjilal (P.W.19) was examined on 14-12-2006, Ashok (P.W. 21) was examined on 14-12-2006, whereas the incident took place on 18-1-2000. Thus, it is clear that some of the witnesses were examined after more than 2 years of incident, whereas some of the witnesses were examined after more than six years of incident and thus, if they could not identify the appellants in the dock, then in the light of the judgment passed by the Supreme Court in the case of **Yakub Abdul Razak Memon Vs. State of Maharashtra,** reported in **(2013) 13 SCC 1,** the evidence of these witnesses cannot be discarded, merely on the ground that they could not identify the appellants in the Court. The Supreme Court in the case of **Yakub Abdul Razak Memon (Supra)** has held as under :

"**729.** Finally, it is contended on behalf of the appellant (A-12) that the testimony of PW 28 should be disregarded since he failed to identify the appellant (A-12) before the court. This contention of the learned counsel is also liable to be rejected since PW 28 had correctly identified the appellant (A-12) during the test identification parade dated 7-5-1993 and he failed to identify him before the court possibly because his testimony was recorded after about 2 years and 9 months i.e. on 21-12-1995.

* * * * *

784. It was submitted by the counsel for the appellant (A-16) after reading paras 7, 8 and 14 of his deposition that the witness (PW 10) was not able to identify the accused even after being given more chances to identify the accused. It was further contended that there being only one eyewitness, who also could not identify the accused, hence, there is no other eyewitness in the case. It is pointed out that the witness had wrongly identified A-16. It is submitted that the witness understood his mistake and informed that he had wrongly identified the accused. It is relevant to mention that the incident took place on 12-3-1993 and the identification was held in the court on 11-10-1995 i.e. after a period of two years, and therefore, the witness could not identify A-16. This cannot be taken to discredit the other facts which have been accurately described by him. The witness had identified the appellant when the parade was conducted by the SEM, however, it is only due to lapse of time that he could not identify the accused again.

* * * * *

1082. It was contended by Ms Farhana Shah, learned counsel for the appellant that PW 25 has not identified the appellant before the court, so his evidence should not be relied upon. It is to be noted that the witness deposed before the court on 13-12-1995 i.e.

> after a lapse of two-and-a-half years after the incident. After a gap of more than two years, it is plausible that memory could have faded and accordingly the witness failed to identify him before the court. However, during the identification parades, which were conducted soon after the incident, PW 25 identified the appellant to be the person who quarrelled with him and parked the scooter at Diamond House. The deposition of PW 25 also corroborates with the evidence of PW 21."

Further, it is clear from the record that the Test Identification Parade of the appellants was conducted by the police within a reasonable time from their arrest. The appellant Munesh was arrested on 17-4-2000, Ex. P.11, whereas the T.I.P. of Munesh was conducted on 10-5-2000, Ex. P.6. Horam was arrested on 22-5-2000, Ex. P.26 and his Test Identification Parade was conducted on 21-6-2000, Ex. P.5, although the arrest memo of the appellants Veera and Ramhet has not been proved by the prosecution, but it is not the case of the appellants that their T.I.P. was conducted after an unreasonable delay. Jagdish was arrested on 22-3-2000, Ex.P.12 and his T.I.P. was conducted on 10-4-2000, Ex. P.8. Thus, it can be held that the TIP was also conducted by the police without there being any unreasonable delay.

The Supreme Court in the case of **Subhash Krishnan Vs. State of Goa** reported in **(2012) 8 SCC 365** has held as under :

> "**24.** ..... In the case on hand while the occurrence took place on 10-10-2003 the TIP was held on 3-11-2003, therefore, it cannot be held that there was a long gap in between in order to state that the witnesses could not have identified the appellant-accused. On the other hand, PW 14 stated that she had already seen the appellant in the village though she did not know his name."

The Supreme Court in the case of **Pramod Mandal Vs. State of Bihar** reported in **(2004) 13 SCC 150** has held as under :

> "**20.** It is neither possible nor prudent to lay down any invariable rule as to the period within which a test identification parade must be held, or the number of witnesses who must correctly identify the accused, to sustain his conviction. These matters must be left to the courts of fact to decide in the facts and circumstances of each case. If a rule is laid down prescribing a period within which the test identification parade must be held, it would only benefit the professional criminals in whose cases the arrests are delayed as the police have no clear clue about their identity, they being persons unknown to the victims. They, therefore, have only to avoid their arrest for the prescribed period to avoid conviction. Similarly, there may be offences which by their very nature may be witnessed by a single witness, such as rape. The offender may be unknown to the victim and the case depends solely on the identification by the victim, who is otherwise found to be truthful and reliable. What justification can be pleaded to contend that such cases must necessarily result in acquittal because of there being only one identifying witness? Prudence therefore demands that these matters must be left to the wisdom of the courts of fact which must consider all aspects of the matter in the light of the evidence on record before pronouncing upon the acceptability or rejection of such identification.
>
> **21.** Lastly in *Malkhansingh* v. *State of M.P.* a three-Judge Bench of this Court of which one of us (B.P. Singh, J.) was a member, after considering various decisions of this Court observed thus: (SCC pp. 751-52, para 7)
>
> "*7.* It is trite to say that the substantive evidence is the evidence of identification in court. Apart from the clear provisions of Section 9 of the Evidence Act, the position in

law is well settled by a catena of decisions of this Court. The facts, which establish the identity of the accused persons, are relevant under Section 9 of the Evidence Act. As a general rule, the substantive evidence of a witness is the statement made in court. The evidence of mere identification of the accused person at the trial for the first time is from its very nature inherently of a weak character. The purpose of a prior test identification, therefore, is to test and strengthen the trustworthiness of that evidence. It is accordingly considered a safe rule of prudence to generally look for corroboration of the sworn testimony of witnesses in court as to the identity of the accused who are strangers to them, in the form of earlier identification proceedings. This rule of prudence, however, is subject to exceptions, when, for example, the court is impressed by a particular witness on whose testimony it can safely rely, without such or other corroboration. The identification parades belong to the stage of investigation, and there is no provision in the Code of Criminal Procedure which obliges the investigating agency to hold, or confers a right upon the accused to claim a test identification parade. They do not constitute substantive evidence and these parades are essentially governed by Section 162 of the Code of Criminal Procedure. Failure to hold a test identification parade would not make inadmissible the evidence of identification in court. The weight to be attached to such identification should be a matter for the courts of fact. In appropriate cases it may accept the evidence of identification even without insisting on corroboration."

22. Learned counsel for the State submitted that having regard to the principles laid down in the aforesaid decisions it was open to him to contend that even in the absence of the test identification parade the conviction of the appellant would be fully justified on the basis of the evidence of PW 4 alone who identified him in court. In this case, however, his identification in court is corroborated by

his identification in the test identification parade.

23. We find considerable force in the submission advanced by the learned counsel for the State. This is not a case where the testimony of PW 4 in court is not corroborated by an earlier identification in test identification proceeding. Since we have found no irregularity or unfairness in the holding of the test identification parade, it must be held that the evidence of PW 4 is amply corroborated by the result of the test identification proceeding. Moreover, we have found that the occurrence did take place in the house of PW 5. PW 4 is an eyewitness, being a relative of PW 5, residing with him. There was sufficient light to enable the witnesses to identify the dacoits. The presence of PW 4 cannot be disputed because he bore the brunt of the attack by the dacoits having suffered three incised wounds and two other injuries. No reason has been suggested why this witness should have falsely implicated the appellant. The dacoity took place for about 25 minutes and PW 4, being in the forefront of the defence, had ample opportunity to notice the appearance and physical features of the culprits. So far as the appellant is concerned, PW 4 categorically stated that he had attempted to hit him with an iron rod. This fact he also stated before the Magistrate who conducted the test identification proceeding. We, therefore, find no reason to suspect the truthfulness and credibility of this witness. He appears to be a witness on whom the Court can place implicit reliance. The courts below have found his evidence to be reliable after critical scrutiny of his testimony. The traumatic experience of that fateful day in which a young girl lost her life within his view, must have left the faces of the assailants imprinted in his memory which certainly would not have diminished or got erased within a period of only 30 days. There is, therefore, no reason to doubt either the genuineness of the test identification proceeding or the veracity of the witness."

In the present case, the witnesses had remained in the captivity of the appellants for a period of more than 30 days. Thus, they had sufficient time to remember and recognize their faces, physical built up etc. Further, within a reasonable time, from the date of arrest of the appellants, they were put for Test Identification and were duly identified by the witnesses, which was followed by identification in the dock.

Thus, considering the evidence, which has come on record, this Court is of the considered opinion that the prosecution has succeeded in establishing the identity of the appellants beyond reasonable doubt.

Demand of Ransom:

In order to prove the demand of Ransom, the prosecution has examined Jagdish (P.W.7), Sultan (P.W.8), Ram Prakash (P.W.15) and Rakesh (P.W.6).

Jagdish (P.W.7) has stated that the accused persons had got a letter written from him asking for ransom of Rs.2.50 lakhs. It was also stated by him, that his family members had given Rs.5 lakhs and only thereafter, the abductees were allowed to go.

It is submitted by the counsel for the appellants that although Jagdish (P.W.7) has stated that he had written a letter, but the prosecution has not seized the said letter, thus, it is clear that the allegation of demand of ransom is bad. Further, it is submitted that the prosecution has not examined any witness to prove that any ransom amount was paid to the appellants, therefore, the allegation of demand of ransom and payment of the same could not be proved beyond reasonable doubt. It is further submitted that it is clear from the prosecution story that the abduction was done in order to restrain the abductees from participating in the election, therefore, at the most, the offence would fall under Section

365 of I.P.C. and the maximum sentence is rigorous imprisonment of seven years and the appellants have already undergone rigorous imprisonment of more than seven years. The submission made by the counsel for the appellants would be considered after considering the entire evidence of demand of ransom led by the prosecution.

Kalicharan (P.W.10), Ram Prakash son of Shyamlal (P.W.22) were certain abductees, who were allowed to go by the appellants, whereas Sultan Singh (P.W. 8) and Ram Prakash son of Ramdeen (P.W.15) are the two abductees, who were allowed to go by the appellants, so that they can communicate the demand of ransom to the villagers and family members of the abductees. In the present case, several persons were abducted by the appellants. Sultan Singh (P.W.8) and Ram Prakash (P.W.15) have stated that after coming back from the captivity of the appellants, they approached the Senior Police Officers. Rakesh (P.W.6), Jagdish (P.W.7), Gayaram (P.W.9), Ram Prakash son of Vijayram (P.W.12), Mata Prasad (P.W.16), Ramjilal (P.W.19), Dashrath (P.W.20), Ashok (P.W.21) have stated that Sultan Singh (P.W.8) and Ram Prakash (P.W.15) were left by the appellants, so that they can inform the villagers about the demand of ransom.

Vishambhar son of Prabhu (P.W11), Vishambhar son of Prabhudayal (P.W.14) have stated that Sultan (P.W.8) and Ram Prakash son of Ramdeen (P.W.15) were allowed to go by the appellants, who came back to the village and informed that the appellants are demanding Rs.11 Lakhs.

Thus, it is clear that the appellants after making demand of Ransom of Rs.11 lakhs, allowed Sultan Singh (P.W.8) and Ram Prakash son of Ramdeen (P.W.15) to go, so that the demand of ransom may be communicated to the villagers and family members of the abductees.

Thus, if the evidence of Jagdish (P.W. 7) to the effect that he was forced to write a letter and non-seizure of said letter is considered, then it would be clear that in fact two of the abductees, namely, Sultan Singh (P.W.8) and Ram Prakash son of Ramdeen (P.W.15) were freed by the appellants, so that they can communicate the demand of ransom to the villagers and family members of the abductees. Thus, it is possible that the appellants after having got a letter written from Jagdish, might have changed their mind and instead of sending the said letter, decided to send Sultan Singh (P.W.8) and Ram Prakash son of Ramdeen (P.W.15) to communicate the demand of ransom, then it cannot be said that absence of seizure of letter by the prosecution, would result in dislodging of prosecution evidence of demand of ransom.

So far as the circumstance of payment of ransom amount is concerned, although the prosecution has not examined any witness to prove that on what date and where the ransom amount of Rs.5 Lakh was paid, but in the considered opinion of this Court, the actual payment of ransom amount is not the essential ingredient to make out an offence under Section 364-A of I.P.C. and demand of ransom is essential.

The Supreme Court in the case of **Malleshi Vs. State of Karnataka** reported in **(2004) 8 SCC 95** has held as under :

> "**12.** To attract the provisions of Section 364-A what is required to be proved is: (*1*) that the accused kidnapped or abducted the person; (*2*) kept him under detention after such kidnapping and abduction; and (*3*) that the kidnapping or abduction was for ransom."

It is next contended by the counsel for the appellants that since the election process was going on and it appears from the record that the persons were abducted so as to refrain them from participating in the election process, therefore, the act of the appellants would fall within the

purview of Section 365 of I.P.C. and not under Section 364-A of I.P.C. The submission made by the counsel for the appellants cannot be accepted, as this Court has already come to a conclusion that the witnesses were abducted for ransom. Even otherwise, if the submission made by the counsel for the appellants is considered, still the offence would fall within the purview of Section 364-A of I.P.C.

Section 364-A of I.P.C. reads as under :

> "**364-A. Kidnapping for ransom, etc.**— 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, 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, shall be punishable with death, or imprisonment for life, and shall also be liable to fine."

Thus, if a person is abducted so as to restrain any other person to do or abstain from doing any act, then also the offence would fall within the purview of Section 364-A of I.P.C. Here, although it is the contention of the appellants that in order to affect the election, the persons were abducted, even such an act would be an offence under Section 364-A of I.P.C.

Thus, this Court is of the considered opinion that the prosecution has succeeded in establishing that the appellants have committed an offence under Section 364-A of I.P.C. Accordingly, they all are held guilty of offence under Section 364-A of I.P.C.

It is next contended by the counsel for the appellants that the independent seizure witnesses have turned hostile and the recovery of 12 bore gun and 2 country made pistol

has not been proved beyond reasonable doubt, because in absence of independent witness, the evidence of Investigating Officer, Manmohan Singh Kushwaha (P.W. 25) cannot be relied upon.

Considered the submissions made by the counsel for the appellants. It is true that the independent seizure witnesses have turned hostile, but the evidence of an Investigating Officer cannot be rejected merely on the ground that he is a police personnel.

The Supreme Court in the case of **Rohtash Kumar v. State of Haryana,** reported in **(2013) 14 SCC 434,** has held as under:-

> ''**35.** The term witness, means a person who is capable of providing information by way of deposing as regards relevant facts, via an oral statement, or a statement in writing, made or given in the court, or otherwise. In *Pradeep Narayan Madgaonkar* v. *State of Maharashtra [(1995) 4 SCC 255]* this Court examined the issue of the requirement of the examination of an independent witness, and whether the evidence of a police witness requires corroboration. The Court therein held that the same must be subject to strict scrutiny. However, the evidence of police officials cannot be discarded merely on the ground that they belonged to the police force, and are either interested in the investigating or the prosecuting agency. However, as far as possible the corroboration of their evidence on material particulars, should be sought. (See also *Paras Ram* v. *State of Haryana [(1992) 4 SCC 662]*, *Balbir Singh* v. *State [(1996) 11 SCC 139]*, *Kalpnath Rai* v. *State [(1997) 8 SCC 732]*, *M. Prabhulal* v. *Directorate of Revenue Intelligence [(2003) 8 SCC 449]* and *Ravindran* v. *Supt. of Customs [(2007) 6 SCC 410]*.)
>
> Thus, a witness is normally considered to be independent, unless he springs from sources which are likely to be tainted and

> this usually means that the said witness has cause, to bear such enmity against the accused, so as to implicate him falsely. In view of the above, there can be no prohibition to the effect that a policeman cannot be a witness, or that his deposition cannot be relied upon.''

The Supreme Court in the case of **Yakub Abdul Razak Memon (Supra)** has held as under :

> "**1737.** Shri Mukul Rohatgi, learned Senior Counsel appearing for the appellant has submitted that two panch witnesses were there, whereas one has been examined i.e. Suresh Satam (PW 37). His evidence cannot be relied upon for the reason that he was the brother of a Police Constable and thus, cannot be termed as an independent witness. Factually, it is true that the panch witness Suresh Satam (PW 37) himself has admitted that his brother was an employee of the Police Department of Maharashtra. Further, merely having such a relationship does not make him disqualified to be a panch witness, nor his evidence required to be ignored. In *Kalpnath Rai*, this Court has held that the evidence of police officials can be held to be worthy of acceptance even if no independent witness has been examined. In such a fact situation, a duty is cast on the court to adopt greater care while scrutinising the evidence of the police official. If the evidence of the police official is found acceptable it would be an erroneous proposition that the court must reject the prosecution version solely on the ground that no independent witness was examined. (See also *Paras Ram* v. *State of Haryana*, *Pradeep Narayan Madgaonkar* v. *State of Maharashtra*, *Sama Alana Abdulla* v. *State of Gujarat*, *Anil* v. *State of Maharashtra*, *Tahir* v. *State (Delhi)*, and *Balbir Singh* v. *State*.)

The counsel for the appellants could not point out any reason, so as to make the evidence of Manmohan Singh Kushwaha (P.W.25) unreliable. Hence, it is proved that a 12

bore gun and 2 country made pistols were seized from the possession of the appellant Jagdish vide seizure memo Ex.P.17.

M.P. Shukla (P.W.18) has proved the sanction for prosecution Ex. P.10 granted by the District Magistrate.

Accordingly, the appellant Jagdish is held guilty of committing offence under Section 25(1-B)(a) read with Section 3 of Arms Act.

It is next contended by the counsel for the appellants that since some of the appellants have been acquitted as the evidence of the witnesses has not been found to be reliable, therefore, the witnesses in respect of the present appellants be also disbelieved. The submission made by the counsel for the appellants cannot be accepted for the simple reason that the maxim *Falsus in Uno Falsus in Omnibus* has no application in India. It is a well established principle of law that the Courts must try to separate the grain from the chaff.

The Supreme Court in the case of **Shakila Abdul Gafar Khan Vs. Vasant Raghunath Dhoble,** reported in **(2003) 7 SCC 749** has held as under :-

> **''25.** It is the duty of the court to separate the grain from the chaff. Falsity of a particular material witness or a material particular would not ruin it from the beginning to end. The maxim "*falsus in uno falsus in omnibus*" has no application in India and the witnesses cannot be branded as liars. The maxim "*falsus in uno falsus in omnibus*" has not received general acceptance nor has this maxim come to occupy the status of rule of law. It is merely a rule of caution. All that it amounts to is that in such cases testimony may be disregarded, and not that it must be disregarded. The doctrine merely involves the question of weight of evidence which a court may apply in a given set of circumstances, but it is not what may be called "a

mandatory rule of evidence". (See *Nisar Ali* v. *State of U.P. [AIR 1957 SC 366]*)

26. The doctrine is a dangerous one especially in India for if a whole body of the testimony were to be rejected, because the witness was evidently speaking an untruth in some aspect, it is to be feared that administration of criminal justice would come to a dead stop. Witnesses just cannot help in giving embroidery to a story, however true in the main. Therefore, it has to be appraised in each case as to what extent the evidence is worthy of acceptance, and merely because in some respects the court considers the same to be insufficient for placing reliance on the testimony of a witness, it does not necessarily follow as a matter of law that it must be disregarded in all respects as well. The evidence has to be sifted with care. The aforesaid dictum is not a sound rule for the reason that one hardly comes across a witness whose evidence does not contain a grain of untruth or at any rate an exaggeration, embroideries or embellishment. (See *Sohrab* v. *State of M.P. [(1972) 3 SCC 751]* and *Ugar Ahir* v. *State of Bihar [AIR 1965 SC 277]*.) An attempt has to be made to, as noted above, in terms of felicitous metaphor, separate the grain from the chaff, truth from falsehood. Where it is not feasible to separate the truth from falsehood, because grain and chaff are inextricably mixed up, and in the process of separation an absolutely new case has to be reconstructed by divorcing essential details presented by the prosecution completely from the context and the background against which they are made, the only available course to be made is to discard the evidence in toto. (See *Zwinglee Ariel* v. *State of M.P. [AIR 1954 SC 15*] and *Balaka Singh* v. *State of Punjab [(1975) 4 SCC 511]*.) As observed by this Court in *State of Rajasthan* v. *Kalki [(1981) 2 SCC 752]* normal discrepancies in the evidence are those which are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror

> at the time of occurrence and those are always there, however honest and truthful a witness may be. Material discrepancies are those which are not normal, and not expected of a normal person. Courts have to label the category to which a discrepancy may be categorized. While normal discrepancies do not corrode the credibility of a party's case, material discrepancies do so. These aspects were highlighted recently in *Krishna Mochi* v. *State of Bihar [(2002) 6 SCC 81]*, *Gangadhar Behera* v. *State of Orissa [(2002) 8 SCC 381]* and *Rizan* v. *State of Chhattisgarh [(2003) 2 SCC 661]*."

The Supreme Court in the case of **Yogendra Vs. State of Rajasthan** reported in **(2013) 12 SCC 399** has held as under :-

> **"13.** The argument advanced by Shri Altaf Hussain, learned counsel for the appellants, stating that the evidence which has been disbelieved in respect of certain accused, cannot be enough to convict the present appellants, has no force. This Court, in *Ranjit Singh* v. *State of M.P. [(2011) 4 SCC 336]* has dealt with a similar issue. The Court herein, considered its earlier judgments in *Balaka Singh* v. *State of Punjab [(1975) 4 SCC 511]*, *Ugar Ahir* v. *State of Bihar [(1975) 4 SCC 511]* and *Nathu Singh Yadav* v. *State of M.P. [(2002) 10 SCC 366]* and has referred to the doctrine *falsus in uno, falsus in omnibus* and held, that the same has no application in India. The court must assess the extent to which the deposition of a witness can be relied upon. The court must make every attempt to separate falsehoods from the truth, and it must only be in exceptional circumstances, when it is entirely impossible to separate the grain from the chaff, for the same are so inextricably intertwined, that the entire evidence of such a witness must be discarded."

The Supreme Court in the case of **Bhagwan Jagannath**

Markad Vs. State of Maharashtra reported in **(2016) 10 SCC 537** has held as under :-

> **''19.** While appreciating the evidence of a witness, the court has to assess whether read as a whole, it is truthful. In doing so, the court has to keep in mind the deficiencies, drawbacks and infirmities to find out whether such discrepancies shake the truthfulness. Some discrepancies not touching the core of the case are not enough to reject the evidence as a whole. No true witness can escape from giving some discrepant details. Only when discrepancies are so incompatible as to affect the credibility of the version of a witness, the court may reject the evidence. Section 155 of the Evidence Act enables the doubt to impeach the credibility of the witness by proof of former inconsistent statement. Section 145 of the Evidence Act lays down the procedure for contradicting a witness by drawing his attention to the part of the previous statement which is to be used for contradiction. The former statement should have the effect of discrediting the present statement but merely because the latter statement is at variance to the former to some extent, it is not enough to be treated as a contradiction. It is not every discrepancy which affects the creditworthiness and the trustworthiness of a witness. There may at times be exaggeration or embellishment not affecting the credibility. The court has to sift the chaff from the grain and find out the truth. A statement may be partly rejected or partly accepted [*Leela Ram* v. *State of Haryana*, (1999) 9 SCC 525]. Want of independent witnesses or unusual behaviour of witnesses of a crime is not enough to reject evidence. A witness being a close relative is not enough to reject his testimony if it is otherwise credible. A relation may not conceal the actual culprit. The evidence may be closely scrutinised to assess whether an innocent person is falsely implicated. Mechanical rejection of evidence even of a "partisan" or "interested" witness may lead

> to failure of justice. It is well known that principle "*falsus in uno, falsus in omnibus*" has no general acceptability [*Gangadhar Behera* v. *State of Orissa*, (2002) 8 SCC 381]. On the same evidence, some accused persons may be acquitted while others may be convicted, depending upon the nature of the offence. The court can differentiate the accused who is acquitted from those who are convicted. A witness may be untruthful in some aspects but the other part of the evidence may be worthy of acceptance. Discrepancies may arise due to error of observations, loss of memory due to lapse of time, mental disposition such as shock at the time of occurrence and as such the normal discrepancy does not affect the credibility of a witness.
>
> **20.** Exaggerated to the rule of benefit of doubt can result in miscarriage of justice. Letting the guilty escape is not doing justice. A Judge presides over the trial not only to ensure that no innocent is punished but also to see that guilty does not escape.''

The Supreme Court in the case of **Raja Vs. State of Haryana** reported in **(2015) 11 SCC 43** has held as under :-

> **''20.** Another circumstance which needs to be noted is that Sukha PW 7, a taxi driver, has deposed that on 18-1-2003 about 11.00 p.m. while he was going to Fatehabad for taking passengers, he saw a bullock cart parked in front of the house of the accused and certain persons were tying a bundle in a "palli". On query being made by him, the accused persons told him that they are carrying manure to the fields. Though, this witness has given an exaggerated version and stated differently about the time of arrest, yet his testimony to the effect that he had seen the accused with a bundle in "palli" at a particular place cannot be disbelieved. The maxim *falsus in uno, falsus in omnibus*, is not applicable in India. In *Krishna Mochi* v. *State of Bihar*, it has been held thus: (SCC pp. 113-14, para 51)

> "*51*. … The maxim *falsus in uno, falsus in omnibus* has no application in India and the witnesses cannot be branded as liars. The maxim *falsus in uno, falsus in omnibus* (false in one thing, false in everything) has not received general acceptance nor has this maxim come to occupy the status of the rule of law. It is merely a rule of caution. All that it amounts to is, that in such cases testimony may be disregarded, and not that it must be disregarded."

21. In *Yogendra* v. *State of Rajasthan*, it has been ruled that: (SCC p. 404, para 13)

> "*13*. … The court must assess the extent to which the deposition of a witness can be relied upon. The court must make every attempt to separate falsehoods from the truth, and it must only be in exceptional circumstances, when it is entirely impossible to separate the grain from the chaff, for the same are so inextricably intertwined, that the entire evidence of such a witness must be discarded."

Thus, if the evidence of the witnesses is appreciated, then it would be clear that they are trustworthy and reliable witnesses and they can be relied upon.

So far as the question of sentence is concerned, it is submitted by the counsel for the appellants that the sentence of Life Imprisonment as awarded by the Trial Court is disproportionate to the offence committed by the appellants and, therefore, the same may be reduced to the period already undergone by the appellants.

The constitutional validity of the sentence of Rigorous Imprisonment of Life or Death for offence under Section 364-A of I.P.C. was challenged and the Supreme Court in the case of **Vikram Singh Vs. Union of India,** reported in **(2015) 9 SCC 502** has held as under :

"**52.** To sum up:

52.1. Punishments must be proportionate to the nature and gravity of the offences for which the same are prescribed.

52.2. Prescribing punishments is the function of the legislature and not the Courts.

52.3. The legislature is presumed to be supremely wise and aware of the needs of the people and the measures that are necessary to meet those needs.

52.4. Courts show deference to the legislative will and wisdom and are slow in upsetting the enacted provisions dealing with the quantum of punishment prescribed for different offences.

52.5. Courts, however, have the jurisdiction to interfere when the punishment prescribed is so outrageously disproportionate to the offence or so inhuman or brutal that the same cannot be accepted by any standard of decency.

52.6. Absence of objective standards for determining the legality of the prescribed sentence makes the job of the Court reviewing the punishment difficult.

52.7. Courts cannot interfere with the prescribed punishment only because the punishment is perceived to be excessive.

52.8. In dealing with questions of proportionality of sentences, capital punishment is considered to be different in kind and degree from sentence of imprisonment. The result is that while there are several instances when capital punishment has been considered to be disproportionate to the offence committed, there are very few and rare cases of sentences of imprisonment being held disproportionate.

53. Applying the above to the case at hand, we find that the need to bring in Section 364-A IPC arose initially because of the increasing incidence of kidnapping and abduction for ransom. This is evident from the recommendations made by the Law Commission to which we have made reference in the earlier part of this judgment.

While those recommendations were pending with the Government, the spectre of terrorism started raising its head threatening not only the security and safety of the citizens but the very sovereignty and integrity of the country, calling for adequate measures to curb what has the potential of destabilising any country. With terrorism assuming international dimensions, the need to further amend the law arose, resulting in the amendment to Section 364-A IPC, in the year 1994. The gradual growth of the challenges posed by kidnapping and abductions for ransom, not only by ordinary criminals for monetary gain or as an organised activity for economic gains but by terrorist organisations is what necessitated the incorporation of Section 364-A IPC and a stringent punishment for those indulging in such activities.

54. Given the background in which the law was enacted and the concern shown by Parliament for the safety and security of the citizens and the unity, sovereignty and integrity of the country, the punishment prescribed for those committing any act contrary to Section 364-A IPC cannot be dubbed as so outrageously disproportionate to the nature of the offence as to call for the same being declared as unconstitutional. Judicial discretion available to the courts to choose one of the two sentences prescribed for those falling foul of Section 364-A IPC will doubtless be exercised by the courts along the judicially recognised lines and death sentences awarded only in the rarest of rare cases. But just because the sentence of death is a possible punishment that may be awarded in appropriate cases cannot make it *per se* inhuman or barbaric. In the ordinary course and in cases which qualify to be called rarest of the rare, death may be awarded only where kidnapping or abduction has resulted in the death either of the victim or anyone else in the course of the commission of the offence. Fact situations where the act which the accused is charged with is proved to be an act of terrorism threatening the very essence of our federal, secular and

> democratic structure may possibly be the only other situations where courts may consider awarding the extreme penalty. But, short of death in such extreme and the rarest of rare cases, imprisonment for life for a proved case of kidnapping or abduction will not qualify for being described as barbaric or inhuman so as to infringe the right to life guaranteed under Article 21 of the Constitution."

The Supreme Court in the case of **Akram Khan Vs. State of W.B.** reported in **(2012) 1 SCC 406** has held as under :

> "**33.** In *Mulla* v. *State of U.P.*, after considering various earlier decisions, this Court held as under: (SCC p. 530, para 67)
>
> "*67*. It is settled legal position that the punishment must fit the crime. It is the duty of the court to impose proper punishment depending upon the degree of criminality and desirability to impose such punishment. As a measure of social necessity and also as a means of deterring other potential offenders, the sentence should be appropriate befitting the crime."
>
> We fully endorse the above view once again.
>
> **34.** It is relevant to point out that Section 364-A had been introduced in IPC by virtue of Amendment Act 42 of 1993. The Statement of Objects and Reasons is as follows:
>
> "1. Kidnappings by terrorists for ransom, for creating panic amongst the people and for securing release of arrested associates and cadres have assumed serious dimensions. The existing provisions of law have proved to be inadequate as deterrence. The Law Commission in its 42nd Report has also recommended a specific provision to deal with this menace. It [was] necessary to amend the Indian Penal Code to provide for deterrent punishment to persons committing such acts and to make consequential amendments to the Code of Criminal Procedure, 1973."
>
> It is clear from the above the concern of Parliament in dealing with cases relating to kidnapping for ransom, a crime which called

> for a deterrent punishment, irrespective of the fact that kidnapping had not resulted in death of the victim. Considering the alarming rise in cases of kidnapping young children for ransom, the legislature in its wisdom provided for stringent sentence. Therefore, we are of the view that in those cases whoever kidnaps or abducts young children for ransom, no leniency be shown in awarding sentence, on the other hand, it must be dealt with in the harshest possible manner and an obligation rests on the courts as well."

Thus, in the light of the fact that Life Imprisonment is the minimum sentence provided for offence under Section 364-A of I.P.C., this Court cannot award the lessor sentence. Accordingly, the sentence of Life Imprisonment as awarded by the Trial Court, does not call for any interference.

Accordingly, the judgment and sentence dated 7-1-2008 passed by IVth A.S.J., Morena, Distt. Morena in Sessions Trial No.258/2000 is hereby affirmed.

The appellant Veera in Cr.A. No. 145/2008 is on bail. His bail bonds and surety bonds are cancelled. He is directed to immediately surrender before the Trial Court for undergoing the remaining jail sentence. All other appellants are in jail.

The appeals fail and are hereby **dismissed.**

(Sheel Nagu)
Judge
31/10/2018

(G.S. Ahluwalia)
Judge
31/10/2018

Arun*

HIGH COURT OF MADHYA PRADESH, JABALPUR,
BENCH AT GWALIOR

Criminal Appeal No.125/2008

.....Appellant: Horam

Versus

.....Respondent: State of M.P.

Criminal Appeal No.145/2008

.....Appellants: Beera and another

Versus

.....Respondent: State of M.P.

Criminal Appeal No.158/2008

.....Appellant: Jagdish

Versus

.....Respondent: State of M.P.

&

Criminal Appeal No.314/2008

.....Appellant: Munesh

Versus

.....Respondent: State of M.P.

Judgment for consideration:

(G.S. Ahluwalia)
Judge
30/10/2018

Hon. Shri Justice Sheel Nagu:

(Sheel Nagu)
Judge
31/10/2018

Judgment post for 31/10/2018

(Sheel Nagu)
Judge
31/10/2018