IN THE HIGH COURT OF MADHYA PRADESH

AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE ROHIT ARYA

&

HON'BLE SHRI JUSTICE SATYENDRA KUMAR SINGH

ON THE 17th OF JULY, 2023

CRIMINAL APPEAL NO.1089 OF 2014

BETWEEN:-

SUGHAR SINGH S/O SHRI AMARLAL, AGE 32 YEARS, OCCUPATION - AGRICULTURIST, R/O VILLAGE JAMUNIYA, POLICE STATION GOPALPURA, DISTRICT SHIVPURI (MADHYA PRADESH)

….....APPELLANT

(BY SHRI AMIT LAHOTI – ADVOCATE)

AND

STATE OF MADHYA PRADESH THROUGH POLICE STATION MORAR, DISTRICT GWALIOR (MADHYA PRADESH)

….....RESPONDENT

(BY SHRI A.K. NIRANKARI – PUBLIC PROSECUTOR)

CRIMINAL APPEAL NO.1190 OF 2014

BETWEEN:-

1. **ASHOK TOMAR S/O MULLU SINGH TOMAR, AGE - 37 YEARS, R/O - VILLAGE ARON, THANA ARON, DISTRICT GWALIOR (MADHYA PRADESH)**

2. UTTAM SINGH S/O BABU SINGH BAGHEL, AGE 43 YEARS, R/O VILLAGE ARON, THANA ARON, DISTRICT GWALIOR (MADHYA PRADESH)

….....APPELLANTS

(SHRI R.C. BHARGAVA & SHRI DEVESH SHARMA – ADVOCATES APPOINTED AS AMICUS CURIAE FOR APPELLANT NO. 1 – ASHOK)
(SHRI A.K. JAIN – ADVOCATE FOR APPELLANT NO. 2 – UTTAM)

AND

STATE OF MADHYA PRADESH THROUGH POLICE STATION MORAR, DISTRICT GWALIOR (MADHYA PRADESH)

….....RESPONDENT

(BY SHRI A.K. NIRANKARI – PUBLIC PROSECUTOR)

CRIMINAL APPEAL NO.1230 OF 2014

BETWEEN:-

SUGAM S/O ASHOK KUMAR CHAUHAN, AGE - 26 YEARS, OCCUPATION - STUDENT, R/O- GHARMOLPURA NAGARIYA, THANA DHANNOHAR, MAINPURI, UTTAR PRADESH.

….....APPELLANT

(BY SHRI A.K. JAIN – ADVOCATE)

AND

STATE OF MADHYA PRADESH THROUGH POLICE STATION MORAR, DISTRICT GWALIOR, MADHYA PRADESH.

….....RESPONDENT

(BY SHRI A.K. NIRANKARI – PUBLIC PROSECUTOR)

CRIMINAL APPEAL NO.1256 OF 2014

BETWEEN:-

CHANCHAL @ ARUN S/O SHRI ARVIND KUMAR PATSARIYA, AGED 23 YEARS, OCCUPATION STUDENT, R/O VILLAGE LIDHORA, DISTRICT TIKAMGAR.

….....APPELLANT

(BY SHRI PRASHANT SHARMA – ADVOCATE)

AND

STATE OF MADHYA PRADESH THROUGH POLICE STATION MORAR, DISTRICT GWALIOR.

….....RESPONDENT

(BY SHRI A.K. NIRANKARI – PUBLIC PROSECUTOR)

CRIMINAL APPEAL NO.11 OF 2015

BETWEEN:-

AJMER S/O SHRI GOPI BAGHELE, AGE 28 YEARS, R/O VILLAGE DAURAR, THANA MOHNA, DISTRICT GWALIOR (MADHYA PRADESH)

….....APPELLANT

(BY SHRI B.K. SHARMA – ADVOCATE)

AND

STATE OF MADHYA PRADESH THROUGH POLICE STATION MORAR, DISTRICT GWALIOR (MADHYA PRADESH)

….....RESPONDENT

(BY SHRI A.K. NIRANKARI – PUBLIC PROSECUTOR)

Reserved on : 24th of April, 2023
Pronounced on : 17th of July, 2023

These Criminal Appeals having been heard and reserved for judgment, coming on for pronouncement this day, ***Hon'ble Shri Justice Satyendra Kumar Singh*** *pronounced the following:*

JUDGMENT

All the above five criminal appeals have been preferred under Section 374(2) of the Code of Criminal Procedure, 1973 (2 of 1974) [in short "Cr.P.C."] against the judgment dated 08.10.2014, passed by the Court of Special Judge (MPDVPK Act), Gwalior in Special Sessions Trial No.93/2010, whereby the appellants have been convicted and sentenced as under:-

Name of Appellants	**Conviction U/S**	**Sentence**		
		Imprisonment	**Fine (Rs.)**	**Imprisonment in lieu of fine**
Sughar Singh S/O Amarlal	364-A of IPC r/w 13 of MPDVPK Act	Life Imprisonment	5,000/-	RI for 6 months
Ashok Tomar	364-A of IPC r/w 13 of MPDVPK Act	Life Imprisonment	5,000/-	RI for 6 months
	25(1-b)(a) of Arms Act	RI for 1 year	200/-	RI for 1 month
Uttam Singh	364-A of IPC r/w 13 of MPDVPK Act	Life Imprisonment	5,000/-	RI for 6 months
	25(1-b)(a) of Arms Act	RI for 1 year	200/-	RI for 1 month
Sugam	364-A of IPC r/w 120-B of IPC r/w 13 of MPDVPK Act	Life Imprisonment	5,000/-	RI for 6 months

Chanchal @ Arun	364-A of IPC r/w 120-B of IPC r/w 13 of MPDVPK Act	Life Imprisonment	5,000/-	RI for 6 months
Ajmer	364-A of IPC r/w 13 of MPDVPK Act	Life Imprisonment	5,000/-	RI for 6 months

2. Since all these criminal appeals arise out of a common judgment, therefore, these are being decided by a common judgment.

3. The prosecution case, in brief, is as follows:

3.1 That, the complainant Vinod Kumar Gupta and the appellant Chanchal @ Arun Kumar Patsariya both are resident of village Lidhora, District - Tikamgarh. Complainant's son Gaurav and the appellant Chanchal @ Arun were close friends and both were studying at Gwalior. Complainant's son Gaurav was studying in NITM College and residing at Jiwaji Nagar, Thatipur, Morar, while appellant Chanchal @ Arun was doing B. Pharma course from Sithouli College and residing with appellant Sugam Chauhan at Aamkho, Kampoo, Gwalior. Complainant's son Gaurav used to visit appellant- Chanchal's residence as and when he went to meet her sister Jyoti Gupta, who was studying and residing at KRG College, Kampoo, Gwalior. Complainant's son Gaurav and his cousin Maneesh, alongwith their friends Ankur and Akash have to go to Indore to celebrate their vacation. Gaurav informed about the same to the appellant Chanchal @ Arun also on his mobile phone. On 12.08.2009, while going towards Madhav Dispensary to collect blood test reports of his father and to hand over the same to his sister Jyoti at KRG College, Kampoo, Gaurav went to appellant Chanchal's room, therefrom, Gaurav and appellant Chanchal @ Arun, both went to Madhav Dispensary and collected the said reports. Thereafter, appellant Chanchal @

Arun got him seated on a tempo and returned towards his room. On the same day, at about 14:30 hours, complainant Vinod Kumar Gupta received a call from Gaurav that he was going to KRG college to give the test report to Jyoti. Thereafter, at about 22:00 hours, when the complainant called Gaurav on his another mobile No.9098545094, the same was received by Maneesh as the same was kept in Gaurav's room. Manish told complainant that Gaurav's mobile No. 9752458665 is switched off and his whereabouts are not known.

3.2 On 13.08.2009 at about 06:00 hours, complainant received a call on his mobile from Gaurav's mobile No.9752458665 that your son has been kidnapped, come in red cap with Rs One Crore in red bag at the next station of Morena on Monday and after that the said mobile number was switched off. On the same day at about 19:15 hours, complainant went to Police Station Morar, District Gwalior and lodged the FIR bearing Crime No.894/2009 (Ex. P-1), against unknown person. During investigation, it was revealed that on 18.08.2009, complainant had again received a demand of ransom of rupees one crore and was told to come at Railway Station Powerkheda, and when he went to Powerkheda Station, no one had come there. On 26.08.2009, he again received a demand of ransom and was threatened for dire consequences in case report to the police is lodged, then he was asked to bring the ransom amount of rupees 4,00,000/, dry fruits and 6-7 pairs of Lakhani shoes, along with him. In pursuance of which, on 27.08.2009 at about 10-11:00 hours, complainant along with his relative Santosh Gupta reached near railway Station Khajoori, where one Adiwasi met him, who took them to the forest, where they met with 5-6 persons armed with deadly weapons. Complainant gave Rs.3,90,000/- and other items to them and returned back with his son Gaurav.

3.3 On 28.08.2009, statements of complainant Vinod Kumar, his brother-in-law Santosh Gupta and his son the abductee Gaurav were recorded. Gaurav revealed that on 12.08.2009, after giving the blood test reports of his father to his sister Jyoti at KRG college, when he was waiting for Tempo, then appellants Chanchal and Sugam came there on a motorcycle and told him to accompany them to Maharajpura. Both the above appellants took him to A.B. Road and on the way, on another motorcycle, appellants Ajmer and his brother Sughar Singh S/O Gopiram met with them. Thereafter, at A.B. Road 5-6 people intercepted their motorcycles and caught them. They beat appellants Chanchal, Sugam and Ajmer and took Gaurav with them to the forest. It was also revealed that apart from aforesaid persons co-accused Sughar Singh S/O Amarlal, Jwala Adivasi, Krishna Adivasi, Raju alias Rajendra and Ratan Lal Adivasi were also involved in the conspiracy to get abducted the complainant's son Gaurav for ransom. On the basis of aforesaid information, on 31.08.2009, appellants Uttam Singh, Sughar Singh S/O Amarlal, Ashok Tomar and Ajmer Singh were arrested as per arrest memos Ex. P/3 to P/6 respectively.

3.4 On 01/09/2009, the disclosure statement, Ex. P/7, of appellant Uttam Singh was recorded by I/O Devraj Singh Kushwah, on the basis of which, on 03.09.2009, SI RS Bhadauria seized an amount of Rs.3,500/- cash, one 0.315 bore country made pistol (Article-A) alongwith three live cartridges (Article-B, C and D) and a rexine bag containing utensils on his instance from his possession as per seizure memo, Ex. P/18. On 01/09/2009, the disclosure statement, Ex. P/8, of appellant Ashok Tomar was also recorded by I/O Devraj Singh Kushwah, on the basis of which on 03.09.2009, SI RS Bhadauria seized an amount of Rs.4000/- cash, one 0.315 bore country made pistol (Article-E) alongwith two live cartridges (Article-F and G) and a

rexine bag containing utensils on his instance from his possession as per seizure memo, Ex. P/22. On 01.09.2009, the disclosure statements, Ex.P/9 and P/10, of appellants Ajmer Singh and Sughar Singh S/O Amarlal were also recorded by I/O Devraj Singh Kushwah, but nothing could be recovered from their possession. On 03.09.2009, the disclosure statements, Ex. P/11 and P/12, of appellants Ashok Tomar and Uttam Singh were again recorded by I/O Devraj Singh Kushwah, but nothing could be recovered in pursuance of the same from their possession. On 06.09.2009, the disclosure statements, Ex. P/13, P/14, P/15 and P/16 of appellants Uttam Singh, Ajmer Singh, Ashok Tomar and Sughar Singh S/O Amarlal were again recorded by I/O Devraj Singh Kushwah, but nothing could be recovered in pursuance of the aforesaid disclosure statements from their possession.

3.5 On 06.09.2009, appellant Chanchal @ Arun was arrested, and his disclosure statement dated 07.09.2009, Ex. P/17, and two disclosure statements both dated 10.09.2009, Ex. P/24 & 25, were recorded by I/O Devraj Singh Kushwah, on the basis which a motorcycle bearing registration number MP 07 KG 1600 and an amount of Rs.2000/ was seized on his instance from his possession as per seizure memo, Ex. P/21 & P/26 respectively. On 11.09.2009, appellant Sugam was arrested as per arrest memo, Ex. P/23, and his disclosure statement, Ex. P/32, was recorded, but nothing could be recovered in pursuance of the same from his possession. The seized country made pistols and cartridges were got examined, prosecution sanctions against appellants Uttam Singh and Ashok Tomar were obtained, and after completion of the investigation charge sheet was filed against the appellants Sughar Singh S/O Amarlal, Ashok Tomar, Uttam Singh, Sugam, Chanchal @ Arun and Ajmer Singh on 21.12.2009 before the Court of Special Judge (MPDVPK Act), Gwalior showing the remaining

accused persons Krishna Adivasi, Raju Baghel @ Rajendra, Ratanlal Adivasi, Jwala Adivasi and Sughar Singh S/O Gopiram as absconding. On 10.08.2010, absconding accused persons Krishna Adivasi, Raju Baghel and Ratanlal Adivasi were arrested as per arrest memo Ex. P/30, P/31 and P/32 A and after completion of investigation supplementary charge-sheet was filed against them on 23.01.2011.

4. Learned Trial Court considering the material *prima facie* available on record, framed the charges against the appellants Chanchal @ Arun and Sugam Chauhan for the offences punishable u/S 364-A read with Section 120-B of IPC read with Section 13 of MPDVPK Act, while against other appellants and co-accused Krishna Adivasi, Raju Baghel @ Rajendra, Ratanlal Adivasi for the offences punishable u/S 364-A of IPC read with Section 13 of MPDVPK Act. Appellants Ashok Tomar and Uttam Singh were also charged u/S 25(1-b)(a) of Arms Act. Appellants and co-accused persons abjured their guilt and prayed for trial.

5. During trial of the appellants and aforesaid co-accused persons, co-accused Ratanlal Adivasi was died and vide order dated 26.04.2012, case against him has been abated. On 19.07.2013, one of the absconding co-accused Jwala Adivasi was arrested and supplementary charge-sheet against him was filed. He was also charged u/S 364-A of IPC read with Section 13 of MPDVPK Act, but thereafter, he again absconded. Co-accused Krishna Adivasi is also absconding, therefore, perpetual arrest warrants have been issued against them. Trial against appellants and co-accused Raju Baghel @ Rajendra was separated and concluded.

6. Learned Trial Court after appreciating oral as well as documentary evidence available on record, vide impugned judgement dated 08.10.2014, acquitted the co-accused Raju Baghel @ Rajendra from the charges

punishable u/S 364-A of IPC read with Section 13 of MPDVPK, while convicted the appellants Chanchal @ Arun and Sugam Chauhan for the offences punishable u/S 364-A read with Section 120-B of IPC and other appellants for the offences punishable under Sections 364-A of IPC read with Section 13 of MPDVPK Act. In addition to above, appellants Ashok Tomar and Uttam Singh have been convicted for the offence punishable u/S 25(1-b)(a) of Arms Act also. All of them have been sentenced as mentioned in para 1 of this judgment.

7. After passing of the impugned judgment dated 08.10.2014, absconding co-accused Sughar Singh S/O Gopiram was arrested and trial against him was concluded, wherein vide judgement dated 30.11.2022, he has been acquitted from the charges framed against him.

8. Being aggrieved by the impugned judgment of conviction and order of sentence, appellants have preferred the instant appeals for setting aside the impugned judgment and discharging them from the charge framed against them.

9. In **Cr. Appeal No.1089 of 2014**, learned counsel for the **appellant Sughar Singh S/O Amarlal** has submitted oral as well as written submission. He submits that as per prosecution case itself, appellant Sughar S/O Amarlal remained with the abductee once or twice in the forest and not throughout the entire period. Admittedly, prior to the incident he was not known to the abductee. The abductee Gaurav admitted in his statements that during his confinement accused persons were addressing themselves by their names, due to which he knew the name of this appellant Sughar. He has not stated anything about his acts and the statement of Santosh Gupta about his acts are inconsistent with the statements of complainant Vinod Kumar Gupta. Admittedly, TIP has not been conducted in the matter. After the arrest

of the appellant, his name and photograph were published in the newspaper. He was produced before the trial Court during remand and trial regularly, therefore, only on the basis of dock identification, conducted after about three years of the incident, it cannot be said that his identity is proved beyond reasonable doubt. Nothing material has been seized from his possession. Thus, the impugned judgment convicting the appellant is liable to be set aside, hence, be set aside. Learned counsel for the appellant has relied upon the judgments passed by this Court in the cases of **Daulat Singh Vs. State of M.P. [2005 (4) MPHT 471]** and **Mohar Singh and others Vs. State of M.P.** [**2011 (5) MPHT 241]** and also the judgment passed by the Apex Court in the case of **Budhsen and another Vs. State of U.P. [AIR 1970 SC 1321]**.

10. In **Cr. Appeal No.1190 of 2014**, learned counsel for the **appellant Ashok Tomar** submits that I/O Devraj Singh Kushwah has admitted in his cross-examination that the place KRG College, Kampoo, Gwalior, from where complainant's son Gaurav was said to be abducted, comes under the jurisdiction of P.S. Kampoo, even then this case was registered at P.S. Morar, which makes the whole prosecution case doubtful. Nothing material has been seized from the possession of the appellant. As per prosecution case itself, demand of ransom was made from the complainant on his mobile phone, but the call details of his mobile phone have not been produced. It has not been brought on record that what specific acts were done by the appellants. Appellant was not known either to the complainant or his son abductee Gaurav, even then TIP has not been conducted. Both the above witnesses admitted in their statements, recorded during trial, that prior to recording of their statements, they had seen the appellants in the court. Seizure witness Pramod has not been examined and other seizure witness

has turned hostile, even then learned Trial Court has convicted the appellant. Impugned judgment is liable to be set aside, hence be set aside.

11. In the same Cr. Appeal No.1190 of 2014, learned counsel for the **appellant Uttam** submits similar arguments as that of the learned counsel for the appellants Sughar Singh S/O Amarlal and Ashok Tomar. He submits that the dock identification of the appellant was conducted after about 3 years of the incident, which is a very weak type of evidence. Call details and tower location of mobile phones, used in the crime, have not been produced. Nothing material has been seized from the possession of the appellant Uttam. There is nothing else on record, which could suggest the involvement of the appellant in the crime. Neither the alleged demand of ransom has been established, nor it has been established that the said demand was conveyed to any person. None of the prosecution witness has deposed about the threatening given by any of the abductor to the complainant or to his son abductee to cause death or hurt to the abductee, hence, impugned judgment is liable to be set aside. In the alternative, he submits that as the ingredients of Section 364-A of IPC are not fulfilled, therefore, the appellant may be granted relief by modifying the sentences imposed on them even if acquittal of the appellant may not be possible.

12. In **Cr. Appeal No.1230 of 2014**, learned counsel for the **appellant Sugam** submits that to attract the provisions of Section 364-A of IPC, prosecution has to prove that the appellants abducted the abductee, kept him under detention and threatened to cause death or hurt to the abductee, or by their conduct gave rise to a reasonable apprehension that the abductee may be put to death or hurt, or caused hurt or death of the abductee in order to compel the complainant to pay ransom. In the instant case, no one has stated that any such threatening was given by the abductors to the complainant or

abductee or any other person. For the purpose of getting paid a ransom, a demand has to be made and communicated. In the instant case neither the demand nor acceptance of ransom has been proved. There is nothing on the record, which suggests that the appellant Sugam had conspired with the abductors to get the abductee Gaurav abducted for ransom. The impugned judgment of conviction and order of sentence convicting the appellant is without any basis and the same may be set aside and the appellant may be acquitted from the charges framed against him.

13. In **Cr. Appeal No.1256 of 2014**, learned counsel for the **appellant Chanchal @ Arun** submits that there is nothing on record to infer that the appellant Chanchal had ever met the abductors earlier and had conspired with them to get the abductee Gaurav abducted for ransom. The statements of the abductee Gaurav that the appellant Chanchal had gone to meet the abductors is an afterthought and improvement from his earlier statement. His statements are highly unnatural and riddled with omissions and contradictions and wholly unworthy of reliance. Appellant Chanchal neither demanded nor accepted the ransom, nor played any role of middleman nor ever went to meet the abductors. As prior to the incident, appellant was in the company of the abductee Gaurav, he was taken into the custody by the police on the suspicion made by the complainant and when appellant Chanachal's family threatened to make complaint against the complainant, he was falsely involved in the case. The learned Trial Court has committed legal error while appreciating the evidence available on record.

13.1. In the alternative, learned counsel for the appellant Chanchal @ Arun submits that as no threat to cause death or hurt has been proved in the matter and essential ingredients of Section 364-A of IPC have not been proved, the appellants may be granted relief by modifying the sentences imposed on

them even if acquittal of the appellants may not be possible. He has relied upon the judgment passed by the Apex Court in the case of **Ravi Dhingra Vs. The State of Haryana**, **2023 Live Law (SC) 167.**

14. In **Cr. Appeal No.11 of 2015**, learned counsel for the **appellant Ajmer** submits that the appellant Ajmer has been implicated in the matter only on the basis of abductee's statements. Abductee Gaurav's statements about the acts of the appellant are inconsistent with his own earlier statements recorded during investigation. His statements are also inconsistent with the statements of his father i.e. complainant on material issues. There is nothing on record to suggest the involvement of this appellant in the crime. As per prosecution case itself, demand of ransom was made on mobile phone on 13/8/2009, but the statements of the complainant were recorded on 28/8/2009. Neither call details nor mobile phone tower location of his mobile phone has been produced on record. Neither ransom amount nor shoes, said to be demanded and accepted by the abductors, have been seized. Learned Trial Court has committed legal error in convicting the appellant, hence he may be acquitted from the charges framed against him.

15. *Per contra,* learned counsel for the respondent/State, while supporting the impugned judgment of conviction and order of sentence, submits that the appellant Chanchal @ Arun was admittedly childhood friend of the complainant's son abductee Gaurav and both were studying and residing at Gwalior and Gaurav used to visit appellant Chanchal's room that is why he knew the appellant Chanchal's room partner appellant Sugam also, and identity of these two appellants are not disputed. Abductee Gaurav lived about 15 days with the abductors and had spent more than sufficient time with them, therefore, TIP was not required in the matter. During dock identification, he has identified rest of the appellants with their specific act.

Complainant Vinod Kumar Gupta (PW-1) and Santosh Kumar Gupta (PW-7) have supported his statement. There is no inconsistency in their statements and prosecution has proved its case beyond reasonable doubt. Learned Trial Court has not committed any error in convicting the appellants. Hence, the appeals filed by the appellants are devoid of merits and deserves to be dismissed.

16. Heard learned counsel for both the parties at length and perused the record.

17. Prosecution case is based on direct evidence and prosecution in its support has examined the complainant Vinod Kumar Gupta (PW-1), his son abductee Gaurav (PW-2) and his brother-in-law Santosh Kumar Gupta (PW-7), who had gone alongwith the complainant to get release the abductee from the possession of the abductors. Other material witnesses are Maneesh Kumar Gupta (PW-3), who was present at the abductee's room during the period of incident and SHO Devraj Singh Kushwah (PW-13), who investigated the case alongwith SI, RS Bhadauria (PW-11).

18. From the statements of complainant Vinod Kumar Gupta (PW-1), which find support from the FIR dated 13/8/2009, Ex. P/1, lodged by him just after receiving the call for ransom, and also from the statements of Maneesh Kumar Gupta (PW-3) and Santosh Kumar Gupta (PW-7), this fact is established that on 12/8/2009 at about 14-14:30 hours, his son Gaurav called him on his mobile phone no.9826348084 and told him that he had collected complainant's blood test reports and was going to hand over the same to his sister at KRG, College, Gwalior. This fact is also established that on the same day at about 22:00 hours, when complainant called Gaurav on his another mobile number 9098545094, his nephew Manish Kumar Gupta received the call, as that mobile was left by Gaurav in his room, and told him

that Gaurav's other mobile number was found switched off since 16:00 hours. This fact is also established that on the next day, i.e., 13/8/2009 at about 6:00 hours, complainant received a call from Gaurav's mobile number and was told by the caller to come in red cap with Rs. One Crore in a red bag at the next railway station of Morena on Monday, as his son has been kidnapped, whereafter, on the same day, at about 19.15 hours, FIR, Ex. P/1, was lodged at P.S. Morar, District Gwalior against unknown person. Hence, there remains no doubt that on 12/8/2009, complainant's son Gaurav was abducted for ransom.

19. Complainant Vinod Kumar Gupta (PW-1) deposed that on 18/8/2009, he again received a call from the abductor for ransom, wherein abductor told the complainant to come at Railway Station Powerkheda in red cap with ransom amount in red bag. He deposed that on the said date, after informing to the police, he alongwith his brother-in-law Santosh Kumar Gupta went to Railway Station Powerkheda in red cap having red bag, but no one had come there, therefore, they came back to Gwalior. He further deposed that on 26/8/2009, he again received a call from the abductor for demand of ransom, wherein abductor agreed to take Rs.4,00,000/- and told him to come in the morning of 27/8/2009 at Railway Station Khajuri in green T-shirt and green cap with cash amount of Rs.3,90,000/- alongwith six pairs of Lakhani pace shoes, dry fruits and other grocery items in green bag. He deposed that on 27/8/2009, as directed by the abductors, he alongwith his brother-in-law Santosh Kumar Gupta went to Railway Station Khajuri with cash amount of Rs.3,90,000/-, six pairs of Lakhani shoes and dry fruits, where a person met and and took them to the forest. He pointing towards co-accused Krishna, present in the Court at the time of recording of his statements, deposed that he met at the Railway Station and took them to the forest.

20. Santosh Kumar Gupta (PW-7) has supported his aforesaid statements, but his statements are inconsistent on the point as to who met them at the Railway Station Khajuri and took them to the forest. He, in para 3 of his statement, pointing towards appellant Sughar Singh S/O Amarlal deposed that he met at the Railway Station and took them to the forest. Both the above witnesses, in their earlier statements, Ex. D/1 and D/3, recorded u/S 161 of CrPC, have only stated that an Adivasi man met them at the railway station, who took them to the forest. They nowhere stated the name or description of that person. Admittedly, TIP of any of the appellants or co-accused persons has not been conducted in the matter, therefore, although the identity of the person, who met the complainant Vinod Kumar Gupta and Santosh Kumar Gupta at Railway Station Khajuri and took them to the forest on 27/8/2009, is not established, but there is no reason to disbelieve their statements with regard to the facts that on the said date they had gone to Railway Station Khajuri with cash amount of Rs.3,90,000/- alongwith six pairs of Lakhani shoes and dry fruits etc., and from where, they were taken to the forest by one of the accused.

21. Complainant Vinod Kumar Gupta (PW-1) and Santosh Kumar Gupta (PW-7) have deposed that after about two hours, when they reached in the forest, they met with the appellant Uttam, who demanded the ransom amount alongwith shoes and dry fruits from them and after receiving the ransom amount and other items, released the abductee Gaurav, whereafter, they alongwith abductee Gaurav returned to Gwalior and on the next day i.e. 28/8/2009, informed the police. Both the above witnesses have stated the name of the appellant Uttam specifying his description as dark complexion person having beard alongwith his acts that he demanded and accepted the ransom from them. During dock identification, they have correctly identified

him in the Court. Their statements, in this regard, are consistent with their earlier statements recorded during investigation u/S 161 of CrPC. Complainant's son abductee Gaurav Gupta (PW-2) has supported their aforesaid statements and has deposed that when he was taken into the forest, appellant Uttam met him there and introduced himself stating his name, while others were calling each other with their names. He identifying the appellant Uttam in the Court, has deposed that on 27/8/2009, when his father Vinod Kumar Gupta and uncle Santosh Kumar Gupta came to the forest and gave the ransom amount and other items to the appellant Uttam, he released the abductee and handed over him to his father.

22. It has vehemently been argued by the learned counsel for the appellant Uttam that as the appellant Uttam was not known to the complainant Vinod Kumar Gupta, his son abductee Gaurav and brother-in-law Santosh Kumar Gupta and his TIP has not been conducted, therefore, only on the basis of his dock identification, conducted after about three years of the incident, it cannot be said that the appellant Uttam is the same person, who demanded and accepted the ransom from the complainant. It is true that much evidentiary value cannot be attached to the identification of the accused in the Court, where identifying witness is a total stranger who had just a fleeting glimpse of the person identified or who had no particular reason to remember the person concerned, if the identification is made for the first time in Court. But, the position may be different when the identifying persons had seen the accused for a considerable period or a number of time at different point of time and places, and in such cases Test Identification Parade (TIP) is not necessary. In this regard observation made by the Apex Court in the case of **Suresh Chandra Bahri v. State of Bihar, 1995 Supp (1) SCC 80,** can be relied upon. Relevant para is as follows :

> 78…. There can be no dispute with regard to the principles as to the evidence relating to identification of a stranger accused involved in any crime. It is well settled that substantive evidence of the witness is his evidence in the court but when the accused person is not previously known to the witness concerned then identification of the accused by the witness soon after his arrest is of great importance because it furnishes an assurance that the investigation is proceeding on right lines in addition to furnishing corroboration of the evidence to be given by the witness later in court at the trial. From this point of view it is a matter of great importance both for the investigating agency and for the accused and a fortiori for the proper administration of justice that such identification is held without avoidable and unreasonable delay after the arrest of the accused and that all the necessary precautions and safeguards were effectively taken so that the investigation proceeds on correct lines for punishing the real culprit. It would, in addition, be fair to the witness concerned also who was a stranger to the accused because in that event the chances of his memory fading away are reduced and he is required to identify the alleged culprit at the earliest possible opportunity after the occurrence. It is in adopting this course alone that justice and fair play can be assured both to the accused as well as to the prosecution. But the position may be different when the accused or a culprit who stands trial had been seen not once but for quite a number of times at different point of time and places which fact may do away with the necessity of TI parade. …..…….....In the present case and in the facts and circumstances discussed above, TI parade was not necessary at all as the witnesses had seen the appellant Raj Pal Sharma continuously for several days and they had the opportunity of knowing and recognizing him since before they made their statement in the court.

22.1 In the case of **Malkhansingh v. State of M.P., (2003) 5 SCC 746 :** also this issue has been discussed at length, which can be relied upon.

Relevant paras are as follows :

> **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. (See *Kanta Prashad* v. *Delhi Admn.* [AIR 1958 SC 350 : 1958 Cri LJ 698], *Vaikuntam Chandrappa* v. *State of A.P.* [AIR 1960 SC 1340 : 1960 Cri LJ 1681], *Budhsen* v. *State of U.P.* [(1970) 2 SCC 128 : 1970 SCC (Cri) 343 : AIR 1970

SC 1321] and *Rameshwar Singh* v. *State of J&K* [(1971) 2 SCC 715 : 1971 SCC (Cri) 638] .)

8. In *Jadunath Singh* v. *State of U.P.* [(1970) 3 SCC 518 : 1971 SCC (Cri) 124] the submission that absence of test identification parade in all cases is fatal, was repelled by this Court after exhaustive consideration of the authorities on the subject. That was a case where the witnesses had seen the accused over a period of time. The High Court had found that the witnesses were independent witnesses having no affinity with the deceased and entertained no animosity towards the appellant. They had claimed to have known the appellants for the last 6-7 years as they had been frequently visiting the town of Bewar. This Court noticed the observations in an earlier unreported decision of this Court in *Parkash Chand Sogani* v. *State of Rajasthan* [Crl. A. No. 92 of 1956 decided on 15-1-1957 (SC)] wherein it was observed: (SCC pp. 522-23, para 11)

"It is also the defence case that Shiv Lal did not know the appellant. But on a reading of the evidence of PW 7 it seems to us clear that Shiv Lal knew the appellant by sight. Though he made a mistake about his name by referring to him as Kailash Chandra, it was within the knowledge of Shiv Lal that the appellant was a brother of Manak Chand and he identified him as such. These circumstances are quite enough to show that the absence of the identification parade would not vitiate the evidence. A person, who is well known by sight as the brother of Manak Chand, even before the commission of the occurrence, need not be put before an identification parade in order to be marked out. We do not think that there is any justification for the contention that the absence of the identification parade or a mistake made as to his name, would be necessarily fatal to the prosecution case in the circumstances."

The Court concluded: (SCC pp. 523-24, para 15)

"*15*. It seems to us that it has been clearly

> laid down by this Court in *Parkash Chand Sogani* v. *State of Rajasthan* [Crl. A. No. 92 of 1956 decided on 15-1-1957 (SC)] that the absence of test identification in all cases is not fatal and if the accused person is well known by sight it would be waste of time to put him up for identification. Of course if the prosecution fails to hold an identification on the plea that the witnesses already knew the accused well and it transpires in the course of the trial that the witnesses did not know the accused previously, the prosecution would run the risk of losing its case."

10. It is no doubt true that much evidentiary value cannot be attached to the identification of the accused in court where identifying witness is a total stranger who had just a fleeting glimpse of the person identified or who had no particular reason to remember the person concerned, if the identification is made for the first time in court.

13. In *State of U.P.* v. *Boota Singh* [(1979) 1 SCC 31 : 1979 SCC (Cri) 115] this Court observed that the evidence of identification becomes stronger if the witness has an opportunity of seeing the accused not for a few minutes but for some length of time, in broad daylight, when he would be able to note the features of the accused more carefully than on seeing the accused in a dark night for a few minutes.

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. In the instant case the courts below have concurrently found the evidence of the prosecutrix to be reliable and, therefore, there was no need for the corroboration of her evidence in court as she was found to be implicitly reliable. We find no

> error in the reasoning of the courts below. From the facts of the case it is quite apparent that the prosecutrix did not even know the appellants and did not make any effort to falsely implicate them by naming them at any stage. The crime was perpetrated in broad daylight. The prosecutrix had sufficient opportunity to observe the features of the appellants who raped her one after the other. Before the rape was committed, she was threatened and intimidated by the appellants. After the rape was committed, she was again threatened and intimidated by them. All this must have taken time. This is not a case where the identifying witness had only a fleeting glimpse of the appellants on a dark night. She also had a reason to remember their faces as they had committed a heinous offence and put her to shame. She had, therefore, abundant opportunity to notice their features. In fact on account of her traumatic and tragic experience, the faces of the appellants must have got imprinted in her memory, and there was no chance of her making a mistake about their identity. The occurrence took place on 4-3-1992 and she deposed in court on 27-8-1992. The prosecutrix appears to be a witness on whom implicit reliance can be placed and there is no reason why she should falsely identify the appellants as the perpetrators of the crime if they had not actually committed the offence. In these circumstances if the courts below have concurrently held that the identification of the appellants by the prosecutrix in court does not require further corroboration, we find no reason to interfere with the finding recorded by the courts below after an appreciation of the evidence on record.

23. In the instant case although the appellant Uttam was stranger for the complainant Vinod Kumar Gupta, his son abductee Gaurav and brother-in-law Santosh Kumar Gupta, but from their consistent statements, it is apparent that they had interacted and spent considerable period of time with him. Abductee Gaurav (PW-2) deposed that he was detained by the appellant

Uttam and others for about 15 days in the forest and lived there with them at different places. His father complainant Vinod Kumar Gupta (PW-1) deposed that on 27.08.2009, when he alongwith Santosh Kumar Gupta had gone to jungle to give ransom, he was there with the appellant Uttam for about 1 – 1½ hours. Santosh Kumar Gupta (PW-7) deposed that he was there with the appellant Uttam for about 2 – 3 hours. Under these circumstances, it cannot be said that the abductee Gaurav, his father Vinod Kumar Gupta and uncle Santosh Kumar Gupta had a fleeting glimpse of the appellant Uttam, and his T.I. Parade was necessary in the matter. Thus, in view of the law laid down by the Apex Court in the aforesaid cases, it is apparent that want of evidence of earlier identification in a T.I. Parade does not affect the admissibility of the evidence of identification in court, and hence, statements of abductee Gaurav, his father Vinod Kumar Gupta and uncle Santosh Kumar Gupta about the identity and complicity of the appellant Uttam in the crime cannot be doubted. All the citations, cited by the learned counsel for the appellants in this regard are of no assistance to the appellant Uttam, as in almost all the above cases witnesses were having fleeting glimpses of the accused persons.

24. From the statements of SHO Devraj Singh Kushwah (PW-13) and SI RS Bhadauria (PW-11), this fact is also established that on the basis of appellant Uttam's disclosure statement dated 01/09/2009, Ex. P/7, apart from other articles, one 0.315 bore country made pistol (Article-A) and three live cartridges (Article-B, C and D) were seized by SI, RS Bhadauria on his instance from his possession as per seizure memo, Ex. P/18. But, so far as the issue whether the facts, in this case, attract the offence under Section 364A of the IPC, is concerned, although the complainant Vinod Kumar Gupta (PW-1), in his earlier statement recorded u/s 161 of CrPC, Ex. D/1,

has stated that on 26/8/2009, when he received a call for ransom, he was threatened not to do any cleverness otherwise, his son abductee would be killed. But, in his statement recorded during trial, he has not made any such statement. His son abductee Gaurav (PW-2) has deposed that on 27/8/2009, the appellant Uttam told him that he had called his father and if this time his father show any cleverness then he will kill him. Except this vague statement, there is nothing else on record to suggest that the appellant Uttam or any of the abductor had threatened complainant or his son abductee to cause death or hurt to the abductee in order to compel the complainant to give ransom, which is an essential ingredient for an offence punishable u/S 364A of the IPC. In this regard judgment passed by the Apex Court in the case of **Ravi Dhingra Vs. The State of Haryana (Supra)**, cited by the learned counsel for the appellants, can be relied upon. Relevant paras are as follows :

> **12.** ….....The nuanced, graded approach of the Parliament while criminalising the condemnable act of kidnapping must be carefully interpreted. Before interpreting the varying ingredients of crime and rigours of punishment, and appraising the judgments impugned, we deem it appropriate to reiterate the observations of this Court in **Lohit Kaushal vs. State of Haryana, (2009) 17 SCC 106**, wherein this Court observed as under:
> "15. ... It is true that kidnapping as understood under Section 364-A IPC is a truly reprehensible crime and when a helpless child is kidnapped for ransom and that too by close relatives, the incident becomes all the more unacceptable. The very gravity of the crime and the abhorrence which it creates in the mind of the court are, however, factors which also tend to militate against the fair trial of an accused in such cases. A court must, therefore, guard against the possibility of being influenced in its judgments

by sentiment rather than by objectivity and judicial considerations while evaluating the evidence."

13. This Court, notably in **Anil vs. Administration of Daman & Diu, (2006) 13 SCC 36 ("Anil"), Vishwanath Gupta vs. State of Uttaranchal (2007) 11 SCC 633 ("Vishwanath Gupta") and Vikram Singh vs. Union of India, (2015) 9 SCC 502 ("Vikram Singh")** has clarified the essential ingredients to order a conviction for the commission of an offence under Section 364A of the IPC in the following manner:

a) In **Anil**, 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 364A of the IPC when the charge framed was under Section 364 read with Section 34 of the IPC. The relevant passages which can be culled out from the said judgment of the Supreme Court are as under:

"54. The propositions of law which can be culled out from the aforementioned judgments are:

(i) The appellant should not suffer any prejudice by reason of misjoinder of charges.

(ii) A conviction for lesser offence is permissible.

(iii) It should not result in failure of justice.

(iv) If there is a substantial compliance, misjoinder of charges may not be fatal and such misjoinder must be arising out of mere misjoinder to frame charges.

55. The ingredients for commission of offence under Section 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 abetement 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 organization 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."

b) In **Vishwanath Gupta**, it was observed as under:

"**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."

c) In **Vikram Singh**, it was observed as under:

"25. … Section 364-A IPC 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-A IPC proposed for incorporation to cover the ransom situations embodying the ingredients mentioned above."

It is necessary to prove not only that such kidnapping or abetement 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 organization or any other person to do or abstain from doing any act or to pay a ransom.

14. Most recently, this Court in **SK Ahmed** has emphasised that Section 364A of the IPC 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.

The relevant portions of the said judgement are extracted as under:

"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 organization 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 fulfill 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 organization 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 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".

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."

xxx

33. After noticing the statutory provision of Section 364-A and the law laid down by this Court in the above noted 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 organization 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 364A cannot be sustained."

Thus, this Court in **SK Ahmed** set aside the conviction under Section 364A of the IPC and modified the same to conviction under Section 363, for the reason that the additional conditions were not met by observing as follows:

"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-A IPC. 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."
>
> **15.** Now, we shall consider the applicability of the above ratio to the present case and deal with appellants' argument about contradictions in the statements of the PW-21. We agree with the High Court that the statements are crucial. We also note that the Courts below, as usual in kidnapping cases, have placed singular reliance on the testimony of PW-21 to prove the element of "threat to cause death or hurt", or to determine whether the appellants' conduct gives rise to a reasonable apprehension that such person may be put to death or hurt.....
> .....These details are crucial to proving the second ingredient of the charge under Section 364A and essential to bring home the guilt under this section namely, threat resulting in giving rise to a reasonable apprehension that such person may be put to death or hurt. It is clear that this ingredient has not been proved beyond reasonable doubt. The Courts below did not throughly address this doubt before convicting the appellants. For proving the ingredient of threat, the intimidation of the child victim, for the purpose of making him silent, cannot be enough. If the sentence carrying a maximum sentence of death and a minimuam sentence of life sentence has such low evidentiary threshold, the difference betweenpunishments for kidnapping under Sections 363, 364 and 364A shall become meaningless.

25. In the instant case, as discussed earlier, there is nothing material on record to suggest that the conduct of the appellant Uttam or any of the abductors gave rise to a reasonable apprehension that the abductee may be put to death or hurt. Therefore, considering the law laid down by the Apex

Court in the case of **Ravi Dhingra Vs. The State of Haryana**, **2023 (Supra)**, it is apparent that neither second nor third ingredient of Section 364A of the IPC is fulfilled in the matter. Hence, the facts, in this case, do not attract the offence under Section 364A of the IPC and learned Trial Court has committed error in holding the appellant Uttam guilty for the offence punishable u/S 364A of IPC. As this fact has already been found proved that abductee Gaurav was abducted and detained/ kept captivated in the forest secretally for about 15 days by the appellant Uttam and other abductors, hence, it would be just and proper to modify the conviction of the appellant Uttam from Section 364A to Section 365 of the IPC.

26. So far as the complicity of the other appellants in the aforesaid crime is concerned, abductee Gaurav (PW-2) has deposed that the appellant Chanchal @ Arun was his childhood friend and at the relevant period of time he was residing at Aamkho, Kampoo, District Gwalior, and he used to visit Chanchal's room as and when he used to go to meet his sister Jyoti at KRG College, Kampoo. He deposed that as appellant Sugam Chauhan was Chanchal's room partner, therefore, he was acquainted with the appellant Sugam also. He deposed that on the date of incident, he had to collect his father's and grandfather's blood test reports and to handover the same to his sister at KRG College, therefore, on 12/8/2009 at about 13.30 hours, he had gone to appellant Chanchal's room, from where he and appellant Chanchal both went to JA Hospital, collected his father's and grandfather's blood test reports, whereafter, he alone went to KRG College and handed over the test reports to his sister. He deposed that at about 15.00 hours, when he came out of the KRG College, he found the appellants Chanchal and Sugam Chauhan standing there on a motorcycle, who told him to accompany them to Maharajpura. He deposed that as the appellant Chanchal was his friend, he

accompanied them and went on their motorcycle.

27. Gaurav Gupta (PW-2) further deposed that after going to some distance, appellants Chanchal and Sugam told him that first they had to go towards AB Road and thereafter, proceeded towards AB Road and after traveling about 1 ½ – 2 hours, they took him to a narrow single road ahead of Mohna Toll Tax, where 5-6 persons met them and after slapping the appellants Chanchal and Sugam, they put them to flight and took the abductee Gaurav into the forest, made search of his belongings and snatched his mobile, purse and ATM card. He deposed that out of six persons, who took him into the forest, one person introduced himself as Uttam and told him that a telephone call for demand of Rs. One Crore has been made to his father by the appellant Sugam and after receiving the same he will be released. He deposed that the persons, who took him into the forest were calling each other with their names as Uttam Singh, Ajmer Singh, Ashok Tomar and Sughar Singh, therefore, he knew the above appellants by their names.

28. During cross-examination of the abductee Gaurav (PW-2) this fact has not been challenged on behalf of the appellants Chanchal and Sugam that he was childhood friend of appellant Chanchal and he used to visit appellant Chanchal's room, situated at Aamkho, Kampoo, Gwalior, as and when he used to go to meet his sister Jyoti at KRG College, Kampoo. This fact has also not been challenged that appellant Sugam was the room partner of the appellant Chanchal, therefore, this fact appears undisputed that the appellants Chanchal and Sugam both were known to the abductee Gaurav and their identities are not disputed. In para 12 of the cross-examination of the abductee Gaurav, it has been suggested on behalf of the appellant Chanchal that on the date of incident at about 14:00 hours abductee was with

the appellant Chanchal, therefore, this fact also appears undisputed that on the date of incident at the relevant period of time, abductee Gaurav had gone to appellant Chanchal's room and was with him. As during cross-examination of the abductee, it has been nowhere suggested on behalf of both the appellants Chanchal and Sugam that Gaurav was having any prior enmity or animosity with them, therefore, there appears no reason to disbelieve his statements about the acts of the appellants Chanchal and Sugam that on the date of incident at about 15.00 hours, they took him to a narrow single road ahead of Mohna Toll Tax on their motorcycle.

29. It has already been found established that when the appellants Chanchal and Sugam took the abductee to a narrow single road ahead of Mohna Toll Tax, 5-6 persons met them and after slapping the appellants Chanchal and Sugam, they put them to go away and took the abductee Gaurav into the forest. From the statements of complainant Vinod Kumar Gupta (PW-1) and I/O Devraj Singh Kushwah (PW-13), it is apparent that after the incident, even after being asked, appellant Chanchal did not tell anything about the incident to anyone. Appellant Sugam also did not disclose the incident to anyone. The aforesaid acts of both the above appellants to take the abductee from KRG College on their motorcycle without informing him as to where they had to go, and thereafter, intentionally not informing abductee's father and to the police about the incident, which took place at the narrow single road ahead of Mohna Toll Tax, clearly shows their involvement in the crime.

30. During cross-examination of the abductee Gaurav, it has been suggested on behalf of both the appellants that they had not taken the abductee from KRG College on their motorcycle and it has been argued on behalf of them that as the abductee's statements are inconsistent with his

earlier statements, recorded u/S 161 of CrPC, on the point that on the date of incident, when he came out of the KRG College, he found the appellants Chanchal and Sugam standing there on a motorcycle and also on the point that after about 7-8 days of the incident, both the above appellants came to the place, where abductee was kept captivated, to meet the abductors, therefore, his statements are not reliable. It is true that the abductee Gaurav, in his statement recorded u/S 161 of CrPC, Ex. D/2, had stated that on the date of incident, when he came out of the KRG College and was waiting for a tempo, both the above appellants came on a motorcycle at the tempo stand, but above inconsistency in his statement being minor in nature, appears immaterial. Other inconsistencies are certainly improvements, but are of not such a nature, which make his whole statements doubtful. Hence, submissions made by the learned counsel for the appellants in this regard have no force and the learned Trial Court has not committed any error in finding the complicity of the appellants Chanchal and Sugam in abduction of the abductee Gaurav for ransom, proved beyond reasonable doubt.

31. So far as the involvement of appellants Ajmer Singh, Sughar Singh S/O Amarlal and Ashok Tomar, in the crime is concerned, prosecution case is totally based on abductee's statements. Abductee Gaurav (PW-2) has deposed that the persons, who took him into the forest were calling each other with their names, therefore, he knew the above appellants by their names. He has stated about the acts of appellant Uttam, and his statements in this regard are consistent, but his statements about the acts of appellants Ajmer Singh, Sughar Singh S/O Amarlal and Ashok Tomar are neither specific nor consistent with his earlier statements recorded during investigation. He, in his statements recorded during trial, deposed that when he was taken into the forest, one person introduced himself as Uttam, while

others were calling each other with their names as Ajmer Singh, Ashok Tomar and Sughar Singh. He, in para 28 of his cross-examination, specifically deposed that the appellant Ajmer met him in the forest, while in his statement recorded u/S 161 of CrPC, Ex. D/2, he has stated entirely different story that when appellants Chanchal and Sugam were taking him towards A.B. Road, appellant Ajmer and his brother co-accused Sughar Singh S/o Gopiram met him on the way, on another motorcycle.

32. As the abductee's statements with regard to the acts of the appellant Ajmer are contradictory to his own statements recorded during investigation and he, in para 28 of his cross- examination, has specifically stated that he saw the appellant Ajmer in the forest, talking with the appellant Uttam, and appellant Ajmer had not told a single word to him, and he has no grievance with the appellant Ajmer. He has not been declared hostile on the above point, therefore, his statements with regard to the acts of the appellant Ajmer cannot be discarded. None of the other prosecution witnesses has stated anything material against appellant Ajmer. There is nothing else material on record against him, which suggests his involvement in the crime. Therefore, only on the basis of abductee's above inconsistent statement, his involvement in the crime, cannot be said to be proved beyond reasonable doubt. Hence, allegations alleged against the appellant Ajmer are found as not proved beyond reasonable doubt.

33. So far as the involvement of appellant Sughar S/O Amarlal is concerned, abductee Gaurav (PW-2) has although identified him in the Court, but his statements with regard to his acts are not specific. Santosh Kumar Gupta (PW-7), in para 3 of his statement, pointing towards him, has identified him in the Court and stated that when he had gone with the complainant Vinod Kumar Gupta to give the ransom amount of

Rs.3,90,000/-, alongwith other items to the abductors, he met them at the Railway Station Khajuri, and took them to the forest. But, his above statements are contradictory with the statements of the complainant Vinod Kumar Gupta (PW-1), who, in para 4 of his statements, pointing towards co-accused Krishna, deposed that he met them at the Railway Station Khajuri. He has neither identified the appellant Sughar S/O Amarlal nor has stated anything about his acts. Both the above witnesses, in their earlier statements, Ex. D/1 and D/3, recorded during investigation, had neither stated the name nor description of the person, who met them at the Railway Station Khajuri. Admittedly, TIP of the appellant Sughar S/O Amarlal has not been conducted. Therefore, only on the basis of above inconsistent statements and his dock identification, conducted after about three years, it is not safe to infer his involvement in the crime. Hence, allegations alleged against the appellant Sughar S/o Amarlal are also found as not proved beyond reasonable doubt.

34. So far as the allegations alleged against the appellant Ashok is concerned, although from the statements of SHO Devraj Singh Kushwah (PW-13) and SI RS Bhadauria (PW-11), this fact is proved that on the basis of his disclosure statement dated 01/09/2009, Ex. P/8, recorded by Devraj Singh Kushwah, one 0.315 bore country made pistol (Article-E) and two live cartridges (Article- F and G) alongwith other items were seized by SI, RS Bhadauria on his instance from his possession as per seizure memo, Ex. P/22, but, so far as his involvement in the crime of abduction of the abductee Gaurav is concerned, Gaurav (PW-2) has identified him in the Court, but his statements with regard to his acts are not specific. Santosh Kumar Gupta (PW-7), in para 1 of his statement, pointing towards him, has identified him in the Court and stated that when he had gone with the complainant Vinod

Kumar Gupta to the forest to give the ransom to the abductors, appellant Ashok had brought the water. But, he admitted in his cross-examination that in his earlier statements, Ex. D/3, he had not stated the aforesaid fact. Complainant Vinod Kumar Gupta (PW-1) has neither identified him in the Court nor has stated anything about his acts. Admittedly, prior to the incident appellant Ashok was not known to the abductee Gaurav and witness Santosh Kumar Gupta. Admittedly, his TIP has not been conducted. Therefore, only on the basis of his dock identification, conducted after about three years, it is not safe to infer his involvement in the aforesaid crime of abduction of the abductee. Hence, although the alleged allegation relating to Arms Act is proved against him, but allegation with regard to his involvement in the abduction of abductee Gaurav can not be said to be proved beyond reasonable doubt.

35. Since, the submission made by the learned counsel for the appellants withregard to the jurisdiction of investigation of Police Station Murar and its effect has rightly been dealt with by the learned Trial Court at length, in para 25 and 26 of impugned judgment, therefore, in view of the aforesaid discussion, appeals are decided in the following terms:-

35.1 Criminal Appeal No.1089/2014 filed by Sughar Singh S/o Shri Amarlal and **Criminal Appeal No.11/2015 filed by Ajmer** S/o Shri Gopi Baghele succeed and are hereby **allowed**. The judgment and sentence dated 08/10/2014, passed by the Court of Special Judge (MPDVPK Act), Gwalior in Special Sessions Trial No.93/2010, so far as these appellants are concerned, is hereby **set aside** and they are acquitted of the charges framed against them.

(a)- Appellant-Sughar Singh S/o Shri Amarlal is on bail. His bail bonds are discharged.

(b)- Appellant-Ajmer is in jail. He be set at liberty, if not required in any other case.

(c) Fine amount (if any) deposited by these appellants be refunded to them.

35.2 Criminal Appeal No.1190/2014, so far as appellant No.1- Ashok Tomar S/o Shri Mullu Singh Tomar is concerned, is **partly allowed**. The judgment and sentence dated 08/10/2014, passed by the Court of Special Judge (MPDVPK Act), Gwalior in Special Sessions Trial No.93/2010, so far as appellant no.1- Ashok Tomar is concerned, is hereby **partly set aside** and while confirming his conviction and sentence under Section 25(1-b)(a) of the Arms Act, he is acquitted of the remaining charges framed against him.

(a)- Appellant No.1-Ashok Tomar S/o Shri Mullu Singh Tomar is on bail. Under the Arms Act, he was directed to suffer rigorous imprisonment of one year and fine of Rs.200/- with default stipulation and the sentences were directed by the Trial Court to run concurrently. This appellant has already suffered the jail sentence of more than one year. Accordingly, subject to payment of fine amount awarded under the Arms Act, his bail bonds are discharged and he be set at liberty, if not required in any other case.

(b)- Fine amount (if any) deposited by this appellant under the remaining offences (except under the Arms Act) be refunded to him.

35.3 Criminal Appeal No.1190/2014, so far as it relates to appellant no.2- Uttam Singh S/o Babu Singh Baghel, is concerned, is **partly allowed**. The judgment and sentence dated 08/10/2014, passed by the Court of Special Judge (MPDVPK Act), Gwalior in Special Sessions Trial

No.93/2010, so far as appellant no.2- Uttam Singh is concerned, is hereby **partly set aside** and while confirming his conviction and sentence under Section 25(1-b)(a) of the Arms Act, his conviction under Section 364-A of IPC r/w Section 13 of MPDVPK Act is altered to Section 365 of IPC r/w Section 13 of MPDVPK Act.

(a) The appellant has suffered till now about 8 years and 9 months actual sentence, while about 10 years and 9 months including remission.

(b) For the offence punishable under Section 365 of IPC r/w Section 13 of MPDVPK Act, the appellant is awarded jail sentence which has already been undergone by him. The fine amount as well as corresponding default stipulation, as awarded by the Trial Court, shall remain the same.

(c) The appellant is in jail. Subject to payment of fine amount, he be set at liberty, if not required in any other case.

35.4 Criminal Appeal No.1230/2014 filed by Sugam S/o Shri Ashok Kumar Chauhan and **Criminal Appeal No.1256/2014 filed by Chanchal alias Arun** S/o Shri Arvind Kumar Patsariya are also hereby **partly allowed.** The judgment and sentence dated 08/10/2014, passed by the Court of Special Judge (MPDVPK Act), Gwalior in Special Sessions Trial No.93/2010, so far as these appellants are concerned, is hereby **partly set aside** and their conviction under Section 364-A r/w 120-B of IPC r/w Section 13 of MPDVPK Act is altered to Section 365 r/w 120-B of IPC r/w Section 13 of MPDVPK Act.

(a)- These appellants have suffered till now about 8 years and 9 months actual sentence, while 10 years and 9 months including remission.

(b) For the offence punishable under Section 365 r/w 120-B of IPC r/w Section 13 of MPDVPK Act, the appellants are awarded jail sentence which has already been undergone by them. The fine amount as well as corresponding default stipulation, as awarded by the Trial Court, shall remain the same.

(c) These appellants are in jail. Subject to payment of fine amount, they be set at liberty, if not required in any other case.

36. The Registry is directed to immediately supply a copy of this judgment to the Appellants, free of cost.

37. Let record of the Trial Court be sent back immediately, along with copy of this judgment, for necessary information and compliance.

(ROHIT ARYA)
JUDGE

(SATYENDRA KUMAR SINGH)
JUDGE

Arun*