

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

RESERVED ON : 14.09.2011

DECIDED ON: 23.09.2011

+ **CRL.A.191/2009, CrI. M. (Bail) 722/2010**
AMAR MISHRA

CRL.A. 224/2009
RAVI @ TITU

CRL.A. 251/2009
RAJENDER @ PAPPU

CRL.A. 272/2009
SATBIR

CRL.A. 368/2009
MUKESH

...Appellants

versus

STATE OF DELHI

..... Respondent in all
matters

Appearance: Mr. Ramesh Gupta, Sr. Advocate with Mr. Sumit Arora and Mr. Devender Bhushan, Advocates for appellant in CrI. A. 191/2009.
Mr. T.D. Sharma, Advocate in CrI. A. 224/2009.
Mr. Anurag Jain, Advocate in CrI. A. 251/2009.
Mr. Siddhartha Luthra, Sr. Advocate with Mr. Anwesh Madhukar and Mr. Yashpreet Singh, Advocates for appellant in CrI. A. 272/2009.
Mr. M.L. Yadav, Advocate in CrI. A. 368/2009.
Ms. Richa Kapoor, APP on behalf of the State in all matters.

CORAM:
MR. JUSTICE S. RAVINDRA BHAT
MR. JUSTICE G.P. MITTAL

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|----|---|-----|
| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to Reporter or not? | YES |
| 3. | Whether the judgment should be reported in the Digest? | YES |

MR. JUSTICE S.RAVINDRA BHAT

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1. This judgment will dispose of five connected appeals directed against a judgment and order of the learned Addl. Sessions Judge (ASJ) dated 27.02.2009 in S.C. No. 23/25.11.08. The appellants were convicted for the offence punishable under Section 364A IPC read with 34 IPC. The appellant in this case (Satbir), besides Sections 364A/34 IPC, was convicted under Section 25 of the Arms Act.

2. The prosecution case briefly is that one Sukh Dayal, (who eventually deposed as PW-2 during the trial and is referred to variously by as “the victim”, was abducted from Punjabi Bagh and under threat of injury, forcibly taken initially to Loni and then to the Ajeet Nagar, Gandhi Nagar, in a car. It is alleged that the PW-2’s abduction and his illegal detention against his will till he was rescued in the intervening night of 19/20.07.1994, was the result of a conspiracy between the appellants and two others, i.e. the two brothers – Rajesh and Rocky Khanna. The prosecution alleged that the initial abduction took place on 16.07.1994 when PW-2 was forced into a car by several youths, who gheraoed him when he went near his car. It was alleged that four of them were in the car and two tailed them in a motorbike. The prosecution alleged that initially PW-2 was detained in the house of PW-6, Khem Chand under the pretext that he was interested in purchasing the latter’s property. Upon PW-6 becoming suspicious of the version given by the abductors, they took-away PW-2 and confined him in Ajeet Nagar, Gandhi Nagar. The prosecution also alleged that in the meanwhile, on 17.07.1994, PW-2’s brother, PW-1 complained to the authorities – resulting in an FIR. His statement was recorded as Ex. PW-1/A. It was stated that PW-1 received ransom calls. The prosecution alleged that the telephone calls of PW-1 were monitored in order to secure leads. Eventually, the prosecution was tipped-off about the likelihood of two accused – Anil and Rajender @ Pappu reaching the spot. It was alleged that this happened late night on 19.07.1994. The police party acting on this tip-off, ambushed Amar Mishra and Rajender @ Pappu, who were riding a motorcycle. Apparently, the shooting incident took place and eventually the two accused were overpowered. Upon interrogation by the police, the two of them made Disclosure Statements which led to recoveries of articles. More crucially, their statements led the police party to the place where PW-2 was confined. He was rescued and his statement, Ex. PW-2/A was recorded. The prosecution alleged

that the appellant Satbir was also nabbed at the spot. It was further alleged that the statements of accused led to the arrest of the others involved in the case, i.e. Mukesh, Vishal, Rajesh Khanna and Rocky Khanna. The prosecution had alleged that Satbir was armed with a rifle when he was arrested; Vishal and Mukesh were also keeping company with PW-2.

3. After arresting the accused, recording their Disclosure Statements and proceeding to recover articles, the prosecution completed its investigation. In the course of the proceedings, the prosecution also claimed to have seized seven audio cassettes containing tape recordings of conversations between the abductors and PW-1. These tapes were handed-over on 26.07.1994. A final report implicating all the accused were filed. They were charged with offences detailed in the beginning of the judgment. They denied guilt and claimed trial.

4. In the course of proceedings before the Trial Court, the prosecution examined 36 witnesses and also produced several material exhibits. After considering them, the Trial Court convicted the appellants and acquitted the remaining three accused, i.e. Vicky, Rajesh Khanna and Rocky Khanna. The Trial Court largely went by the testimonies of PW-1, PW-2, PW-6 in concluding that Sukh Dayal was abducted by the Appellants, taken to two different places, and hidden, while they sought ransom of ₹ 20,00,000/- from PW-2 for his release. The firing incident, which resulted in the arrest of Amar Mishra and Rajender, was held to have been proved, as also their arrest on 20-07-1994, their disclosure statements leading to the rescue of PW-2, and the arrest of the other Appellants.

Contentions on behalf of the Appellants

5. Mr. Ramesh Gupta, learned senior counsel argued on behalf of Amar Mishra; Mr. Anurag Jain, learned counsel appeared for Rajender @ Pappu and adopted Mr. Gupta's submissions. It was emphasized by counsel that the recovery of alleged weapons, i.e. the pistol and cartridge, during the motorcycle incident on 20.07.1994 – when firing was allegedly resorted to by the accused, was unconnected with the offences these appellants were charged with; they were made to stand trial for that incident, during which the prosecution was unable to prove those allegations. Besides, urged counsel, the so-called independent witness, Sita Ram, was not even joined in the investigation and trial. Therefore, the allegations concerning Amar Mishra, and Pappu and how they could be connected with the kidnapping, became unbelievable. In a similar

view, it was submitted that the disclosure statements – relied upon by the prosecution (Ex. PW-18/A and Ex. PW-18/B) were unreliable.

6. It was next highlighted that the victim, PW-2, was unclear, in his deposition, about the identities of the abductors. In these circumstances, neither Amar Mishra, nor Rajender, who were admittedly not found where he (the victim) was recovered from, could be connected with the crime.

7. Learned counsel submitted that PW-1's evidence could not prove the fact of the demand for ransom. Elaborating, counsel emphasized that this witness was vague as to when and through what phone numbers, or network connections, he received the demand. Furthermore, counsel argued that the telephone numbers from where ransom demand calls were allegedly made, were not proved; they were not even disclosed. Similarly, counsel argued that the tape recordings of conversations (Ex.P-1 to Ex. P-7) were inadmissible, and the Trial Court did not follow the procedure prescribed by law in receiving them. It was argued that the prosecution did not lead any evidence to show who recorded the alleged conversations, from what telephone connections, and on what dates. No one testified that the tapes were kept in safe custody; the prosecution story itself was that the tapes were taken charge of by the I.O. on 26.7.1994, i.e., ten days after the alleged incident. The counsel took serious objection to the procedure adopted by the Trial Court in concluding the hearing of the case, fixing a date for judgment, and in the meanwhile, receiving the tape recording transcripts, and, without notifying the accuseds' counsel, proceeding to take them on record, and then into consideration as incriminating evidence.

8. The learned counsel submitted that besides not proving use of threat, or violence (an essential ingredient for the offence punishable under Section 364-A IPC) the prosecution had also not proved any demand vis-à-vis Amar Mishra and Pappu. The exclusion of the tape-recording meant the Court cannot take the contents of the recording, or the transcripts into consideration. The only other evidence was the general and vague evidence in the form of PW-1's testimony which could not have implicated the said two accused. The Trial Court, according to the learned counsel, fell into grave error in concluding that these accused had made a demand.

9. Mr. Siddharth Luthra, learned senior counsel for Satbir argued that so far as this appellant is concerned, the concerned witnesses PW-2 and PW-6 had attributed no role. It was highlighted

by learned counsel that PW-2 the victim not only refrained from naming Satbir but in fact denied his involvement in the kidnapping incident as well as his presence about the place where he was recovered from, on pointed leading queries put to him in this regard by the Public Prosecutor with the permission of the Court. Similarly PW-6 in whose house the abducted victim PW-2 was taken initially after the kidnapping did not identify Satbir. He was not confronted with the statement made under Section 164 Cr.P.C. during the course of investigation.

10. It was argued that the best evidence in this regard was of PW-2, the victim himself is declining to identify Satbir and on the other hand denying his presence altogether, when contrasted with his deposition identifying other accused and assigning specific roles, ought to have resulted in Satbir's acquittal. Learned counsel submitted that the reliance placed upon the police witnesses PW-19 S.P. Yadav, PW-30 SI Sunil Kumar Sharma and PW-33, SI Raj Singh could not have been relied and in any case they were not credible in view of the denial of Satbir's involvement by PW-2.

11. It was next argued that there was no evidence of ransom made to the victim's family or the victim by Satbir. The deposition of PW-1 with regard to a demand was vague, no details were furnished. Learned counsel submitted that crucially the trial court fell into an error in holding that Satbir was apprehended from House No.4225 Ajeet Nagar, Gandhi Nagar. PW-2 however, did not support this and therefore, his testimony could not have resulted in such a finding. Learned counsel said that prosecution had sought to rely upon the testimony of Satbir's father PW-13 to prove that he (the latter) owned the premises. However, there was no such evidence forthcoming and the materials on record suggested that the house had been sold prior to the incident and the alleged recovery of PW-2. On the other hand DW-1 had deposed that Satbir was present at Panchsheel Garden, Naveen Sahadara when the police picked him up. This testimony remained unshaken despite cross-examination by the Public Prosecutor.

12. Learned counsel argued that the trial court appears to have relied on the statement of co-accused, made during the custodial interrogation as to the House No.4225 Ajeet Nagar. It was argued that this finding was unsupportable in law in view of the judgment reported as *Haricharan Kureni Vs. State of Bihar*, AIR 1964 SC 1184, and *Param Hans Yadav Vs. State of Bihar*, 1987 (2) SCC 197. Learned counsel also argued that the chance print allegedly lifted from the place where PW-2 was rescued were not linked to Satbir. In this regard reliance was

placed on Ex. PX, the finger print expert report which did not implicate Satbir. Learned counsel underlined that this was in support of the Police seizing articles Memo Ex. PW-18/C which according to PW-19 pertained to articles seized from House 4225 Ajeet Nagar. Having regard to this and the positive statement of PW-2 denying Satbir's involvement or presence at the site, the trial court could not have convicted him at all.

13. Learned counsel submitted that even on the question of alleged demand, the only testimony of PW-1 could have been entertained. The trial court fell into an error in considering the tape recording and its related transcripts because the safeguards mandated in the Supreme Court decisions, as a condition for permitting such evidence had not been followed. In this regard, learned counsel relied upon the decision of the Supreme Court reported as *Yusuf Alli Esmail Nagree Vs. State of Maharashtra* AIR 1968 SC 147 and *Ram Singh & Others Vs. Col. Ram Singh* 1985 Supp. SCC 611. In Ram Singh the Court had indicated the guidelines as follows:

"A tape-recorded statement is admissible in evidence, subject to the following conditions:

- 1) The voice of the speaker must be identified by the maker of the record or other persons recognizing his voice. Where the maker is unable to identify the voice, strict proof will be required to determine whether or not it was the voice of the alleged speaker.*
- 2) The accuracy of the tape recorded statement must be proved by the maker of the record by satisfactory evidence: direct or circumstantial.*
- 3) Possibility of tampering with, or erasure of any part of it, the tape recorded statement must be totally excluded.*
- 4) The tape recorded statement must be relevant.*
- 5) The recorded cassette must be sealed and must be kept in safe custody or official custody.*
- 6) The voice of the particular speaker must be clearly audible and must not be lost or distorted by other sounds or disturbances".*

14. Lastly the learned counsel argued that besides absence of proof of Satbir's identification, linked his involvement in the crime. A similarly and identically placed accused Rajesh Khanna, was allegedly identified by PW-2 as someone involved in the kidnapping during the TIP held on 26.07.1994, Ex. PW-20/4. The court had reasoned, in the impugned judgment such identification lost its value because during the testimony in Court PW-2 denied Rajesh Khanna's liability. It

was argued that Satbir's case stood on a better footing because PW-2 attributed no role and denied his involvement therefore he was entitled to an acquittal.

15. Learned counsel Mr. R.D. Sharma, argued on behalf of Ravi @ Titu besides reiterating the statement with regard to the lack of any admissible evidence regarding the alleged ransom demand that in such context, learned counsel placed reliance upon the judgment reported as *R.M. Malkhani Vs. State of Maharashtra* 1973 (1) SCC 471 for the proposition that after recording of their transcripts could not have been looked into present case as it was submitted that the involvement of this appellant had not been established. Learned counsel argued that PW-2 Sukh Dayal had named three individuals amongst the accused as those who had abducted him on 16.07.1994. Ravi @ Titu was not one of those three. However, he later added his name as an afterthought. It was emphasized also that the PW-2's testimony was at variance with contradictions as to what he had deposed in cross-examination. Learned counsel submitted that where the identity of the accused is unknown to the victim of the crime. It is essentially for the prosecution to lend assurance with regard to avoidance of false implication by holding Test Identification Parade (TIP). However, no TIP was conducted in respect of Ravi @ Titu. This according to the counsel was fatal in the light of the dicta in *Mohan Lal Ganga Ram Gehani Vs. State of Maharashtra* AIR 1982 SC 839, *State of Maharashtra s. Sukhdev Singh @ Subha & Ors.*, AIR 1992 SC 2100 and *Mahabir Vs. State of Delhi*, 2008 Cril. LJ 3036.

16. It is next argued on behalf of Ravi @ Titu that his involvement also was not proved because PW-6 made contradictory statements. In this respect, learned counsel relied upon the previous testimony of this witness made under Section 164 Cr.P.C. and contrasted it with when he deposed in the Court. Learned counsel also argued that Ravi's presence was not deposed to by any public witness either on the date of the alleged abduction or on the date of alleged recovery of PW-2. Therefore, reliance by the Prosecution on the testimonies of the official police witnesses was hardly credible.

17. Mr. M.L.Yadav argued on behalf of the appellant Mukesh. He adopted the submissions made on behalf of the other appellants as regards lack of evidence in respect of ransom demand as well as the absence of proof regarding use of force or threat, necessary to complete the ingredients under Section 364 A IPC. It was submitted that the only incriminating evidence on the basis of which Mukesh was sought to be implicated for the offence was the disclosure

statement by Amar and Rajender (Ex.PW-18/A and PW-18/B) which were inadmissible. Mukesh was not arrested on 20.7.1994 at Ajeet Nagar; on the contrary the prosecution case was that he apprehended during firing incident near Dharamsheel at Yamuna Vihar. Learned counsel submitted that this was spoken of by official witnesses PW 23 and PW-34.

Prosecution argument

18. Ms. Richa Kapoor, the learned APP urged that the Trial Court's findings did not call for any interference. She argued that having regard to the facts proved during the trial, the Appellants' conviction and sentence under Sections 364-A/34 IPC was justified and proper. It was submitted that Section 364-A of the IPC was brought into the statute book with the intention of tackling the menace of kidnapping for ransom, coupled with the use of certain categories of force – or even threat of force. Learned counsel submitted, in this context, that legislative intent has to be gathered from the statement of Objects and Reasons which led to the amending Act, and the actual ingredients which constitute the offence. Counsel urged that if the Court were to construe the offence from this background, the menace of that species of kidnapping would be dealt with. It was especially urged that unlike kidnapping or abduction, which may or may not involve the use of force – or of ransom, Section 364-A involves the use of both, which were proved beyond reasonable doubt in the present case.

19. The learned APP submitted that there can be no room for doubt from PW-2's testimony that he was abducted or kidnapped against his will. As testified by PW-1 and other PW-5, PW-7 and PW-8, the victim PW-2 used to engage himself in business at Kashmere Gate; he used to return home, in Punjabi Bagh, by a mini chartered bus. PW-2 deposed that on reaching his destination a few boy gheraoed him, and forced him inside a car. PW-2 clearly identified Amar Mishra, Rajender @ Pappu, Mukesh and Ravi @ Titu as those boys. His deposition about the identity of these boys remained unshaken during the cross-examination. Further, argued learned APP, the use of force or threat of bodily injury was proved by PW-2, who mentioned that the four accused, while taking him in the car, had held him at knife point, and asked him to keep the face down during the car ride. The victim was held against his will, and shifted from one house to another. PW-6 corroborated these facts. The learned APP submitted that the potential bodily threat to the victim, was apparent because Satbir had kept guard over him, at the time he (PW-2) was rescued; Satbir was even armed with a rifle, which was seized and produced during the trial.

20. The learned APP submitted that the abductor's objective was to obtain ransom, which was proved through the deposition of PW-1, who specifically mentioned about a demand for Rs. 20,00,000/- as ransom, being made through a telephone call. It was urged, further, by the prosecution that the tape recordings – Ex. P-1 to P-7, seized by the IO, also corroborated this, and that these recordings as well as transcripts were admissible in evidence.

21. The APP urged that the involvement of Amar Mishra, in the offence as well as that of Rajender, were proved from three separate instances. First, the evidence of PW-1 established their presence at the time of his abduction, and threat, and conduct, indicating use of force to harm, by way of use of knife to intimidate and silence him into submission. The second was their involvement in the firing incident, on 20.07.1994, and arrest that day. Their disclosure statements Ex. PW-18/A and PW-18/B were admissible to the extent they led to discovery of a fact, i.e. the hideout where PW-2 had been detained. As a result, the victim PW-2 was rescued. He again deposed about this. These facts were corroborated through the testimonies of PW-30, PW-34, PW-18 and PW-19. Furthermore, PW-6 deposed that Amar was amongst those who took the victim to his house, and kept him there.

22. It was submitted that the evidence in regard to Rajender @ Pappu was identical to that of Amar Mishra; besides, a *desi katta* (country made pistol) was recovered from his possession, after the firing incident which occurred during the early hours of 20-07-1994. His disclosure statement was made simultaneously as Amar Mishra's; this led the police to the place where the victim PW-2 had been detained, and he was rescued. The role assigned to Rajender – who was identified by PW-2 – in the abduction incident of 16-07-1994, was that of driving the car into which he (PW-2) was forced, and where he was detained against his will, with the threat of use of force, at knife point. Furthermore, submitted the learned APP, during cross examination, of PW-2, a suggestion was given at the behest of this Appellant, that he went with Amar and Ravi @ Tittu, to settle Tony's account. Being an accomplice, who aided the other accused, in the commission of the crime, and was later aware of the place where the victim had been held for ransom, Rajender fell into the mischief of Section 34, IPC, and was correctly convicted, and dealt with by the impugned judgment.

23. It was next submitted that the disclosure made by Amar Mishra and Rajender @ Pappu, after their arrest, led the investigation to form a raiding party which went to arrest Mukesh and

two others, said to be waiting at Yamuna Bazar, in Car No. DNC-2308. The raiding party consisted of PW-34 and PW-23. The latter deposed in the trial that the car was parked in the Dharmashala of Yamuna Bazar, and its occupants tried to flee, on seeing the police approach them; they also fired at the police party. The police fired back. Eventually, near the Yamuna Bazar iron bridge, the car stopped, and Mukesh got down to flee, but was apprehended by PW-34 and PW-23 after they gave a chase. This Appellant was also involved in the offence, as PW-2 identified him, as the assailant/abductor, who held the knife at his neck. Here too, the principle of joint responsibility underlying Section 34 IPC, would apply to Mukesh, justifying his conviction and sentence by the Trial Court.

24. The learned APP argued that as far as Satbir goes, he was arrested on 20.7.94 when the police party raided his house No. 4225, Ajeet Nagar, Gandhi Nagar and rescued Sukhdayal. He was caught red handed together with Vishal and Ravi while guarding Sukhdayal with a loaded rifle and three live cartridges. The role of Satbir becomes more significant as the house where the victim was held captive belonged to Satbir's family. Reliance is placed on the disclosure statement of Amar Mishra which led to House no. 4225, Ajeet Nagar, Gandhi Nagar. On the basis of this disclosure statement police found the house where the victim was held captive. He and the others were then arrested. The address also finds mention in the disclosure statement of Rajinder (Pappu) as the house where Sukhdayal was held captive. It was argued that under Section 27 of the Evidence Act the disclosure statement is admissible since on the basis of this statement the police was able to rescue the victim.

25. Arguing next regarding Ravi's role in the crime, it was submitted he was also arrested from Satbir's house where the victim was held captive by him, Satbir and Vishal. Sukhdayal had categorically stated that Ravi (Titu) was seated in front of the car in which he was kidnapped. Khem Chand (PW-6) in his deposition also mentions Ravi (Titu) as one of the persons who had bought the victim to his house. He was convicted on the basis of the statements of these two witnesses and the fact that he was caught red handed in the house where the victim was held captive. Besides these, submitted the APP, the testimony of PW-30 regarding the presence of Ravi, at the place where PW-2 was

rescued from, remained unchallenged, thus leading the Trial Court to hold that the prosecution had proved complicity and involvement of Ravi @ Tittu, in the crime.

26. Section 364-A IPC was inserted in 1993, through an amending Act (Act 42 of 1993). Before introduction of Section 364-A IPC, by Act No.42 of 1993, (applicable w.e.f. 22.5.1993) the only penal provision for punishing the accused for kidnapping or abduction was for murdering or so disposing of the victim or to put the victim in danger of being murdered. Section 364 IPC existed for that purpose; it reads as follows:-

"364. Kidnapping or abducting in order to murder

Whoever kidnaps or abducts any person in order that such person may be murdered or may be so disposed of as to be put in danger of being murdered, shall be punished with imprisonment for life or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine."

It is apparent from a plain look at the above provision that it was silent as regard those instances where the abductors or kidnappers used to threaten to cause death or hurt for ransom. The Courts in such cases, used to convict the accused under Section 364 with the aid of Section 384 IPC. Parliament, with intent to widen the scope of penal provisions and to punish abductors for the offence of kidnapping "for ransom" introduced Section 364-A. Section 364-A as added by that amendment, originally read as follows:-

"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 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."

The statement of objects and reasons for the Amendment Act of 1993, reads as follows:

"Statement of Objects and Reasons.—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.”

The provision, as originally inserted was considered inadequate, when the offence of kidnapping for ransom in order to compel any foreign State or international inter-governmental organization was committed. To cater to the menace of kidnapping for ransom in order to compel the foreign State or international inter governmental organization, and to further widen the scope of Section the words "any other person" already existing in Section 364-A prior to 1995 was substituted with words "*any foreign State, international inter- governmental organization or any other person*" by Act No.24 of 1995 in Section 364-A IPC, brought into force w.e.f. 26.5.1995. The provision, after amendment after 1995, reads as follows:

“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 intergovernmental organization 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 with effect from 26.05.1995, the offence of kidnapping or abduction did not cover only private individuals but also cases of abduction to compel private individuals for ransom as well as compel any foreign State, international inter-governmental organization to do or abstain from doing any act or to pay ransom. It is worth mentioning that the amending Act 42 of 1993, also introduced an amendment to Section 39 of the Code of Criminal Procedure, which mandates

“every person aware of the commission of, or of the intention of any other person to commit any offence punishable under any of the following provisions of the Indian Penal Code, (45 of 1860), namely-

.....

.....

(va) section 364-A, that is to say, offence relating to kidnapping for ransom, etc;

.....

.....

shall in the absence of any reasonable excuse, the burden of proving which excuse shall lie upon the person so aware, forthwith give information to any of the nearest magistrate or indulging police officer of such commission or such intention.”

27. Section 364-A alludes to "Kidnapping" as well as "Abduction". Section 359 defines Kidnapping. It envisions two types of kidnapping i.e. (1) kidnapping from India; and (2) kidnapping from lawful guardianship. Abduction (defined by Section 362) envisages two types of abduction i.e. (1) by force or by compulsion; and/or (2) inducement by deceitful means. The object of such compulsion or inducement must be the removal of the victim from any place by force (involuntarily) or by deceit (voluntarily, through false promises or representations).

28. The decision in *Vishwanath Gupta v State of Uttaranchal* 2007 (11) SCC 633 held that for the prosecution to prove the offence, three facts had to be established. The court held that:

"According to Section 364A, 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.

6. The important ingredient of Section 364A 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 made then the victim is likely to be put to death and in the event death is caused, the offence of Section 364A 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 made, then causing death. If the three ingredients are available, that will constitute the offence under Section 364A of the Indian Penal Code. Any of the three ingredients can take place at one place or at different places...."

In the decision reported as *Suman Sood v State of Rajasthan* 2007 (5) SCC 634, it was held that:

"57. Before the above section is attracted and a person is convicted, the prosecution must prove the following ingredients;

(1) The accused must have kidnapped, abducted or detained any person;

(2) He must have kept such person under custody or detention; and (3) Kidnapping, abduction or detention must have been for ransom.

[see also Malleshi v. State of Karnataka, (2004) 8 SCC 95]

58. The term 'ransom' has not been defined in the Code.

59. As a noun, 'ransom' means "a sum of money demanded or paid for the release of a captive". As a verb, 'ransom' means "to obtain the release of (someone) by paying a ransom", "detain (someone) and demand a ransom for his release". "To hold someone to ransom"

means "to hold someone captive and demand payment for his release". (Concise Oxford English Dictionary, 2002; p.1186).

60. *Kidnapping for ransom is an offence of unlawfully seizing a person and then confining the person usually in a secrete place, while attempting to extort ransom. This grave crime is sometimes made a capital offence. In addition to the abductor a person who acts as a go between to collect the ransom is generally considered guilty of the crime.*

61. *According to Advanced Law Lexicon, (3rd Edn., p.3932); "Ransom is a sum of money paid for redeeming a captive or prisoner of war, or a prize. It is also used to signify a sum of money paid for the pardoning of some great offence and or setting the offender who was imprisoned".*

62. *Stated simply, 'ransom' is a sum of money to be demanded to be paid for releasing a captive, prisoner or detenu."*

The prosecution's obligation to prove all the ingredients, particularly the use of force, or threat to do so, to cause death or bodily injury, to the victim, coupled with the demand for ransom, was highlighted in an earlier decision, reported as *Anil v Administration of Daman & Diu* 2006 (13) SCC 36.

Analysis and Findings

29. It is apparent that the findings in this case were based primarily on the eyewitness testimonies of PW-1 and PW-6, and the deposition of PW-1. PW-1, the complainant Ram Lal deposed on the lines of his complaint as Ex.PW1/A and stated that he and his daughter received ransom call of ₹ 20 Lakhs for releasing of Sukh Dayal, the victim and his brother, who deposed as PW-2, on 16-07-1994. He searched for his brother, but without any success, and ultimately filed the complaint, in the early hours of the next day. He handed over to the police seven audio cassettes Ex.P-1/1 to Ex.P-1/7, containing recordings of conversations with the abductors, who had demanded ransom. He also went to the police station in the late night of 19-07-1994.

30. PW-2, the kidnapped businessman Sukh Dayal deposed stated that on 16-07-1994, after finishing his work, he went to his house in Punjabi Bagh, and was surrounded by 3-4 boys, who forced him into a car. He identified Amar Mishra, Rajender, Mukesh and Ravi, as the kidnappers. He was finally rescued by the police from the abductors in the early hours of the morning of 20-07-1994. He identified accused Rajender @ Pappu, Mukesh, Amar and Ravi as the kidnappers. Though he identified accused Rocky, in the same breath, he clarified that he (Rocky) was not involved in kidnapping and that he identified him because he was working in the market. He was asked leading questions by the prosecution. He stated that accused Tony

and Satbir were not involved in his kidnapping. He proved Memo of his recovery as Ex.PW2/B. He mentioned having been shifted from one place to another during the time he was with the kidnappers, and also said that in one instance, he was kept in a place, where an aged person resided. He categorically denied the involvement of Satbir, and denied any suggestion that he was present or was armed with a gun. He also stated that Ravi @ Tittu, - again identified in court, was present at the place where he had been detained, and from where he was rescued by the police. During cross examination, he volunteered, to a query, stating that one of the Appellants, i.e Mukesh had held a knife at his neck, while forcing him into the car, and for the time he was in it, on the day of his abduction.

31. PW-3 is Swaran Lal, PW-5 Radha Kishan and PW-7 Rakesh Bhatial were co-passengers of Sukh Dayal Malik in the chartered matador used by him on the date of the incident. Each of them testified that on 16.07.94 he (PW-2) Sukh Dayal alighted at Punjabi Bagh at around 8:15 PM.

32. PW-6 Khem Chand, according to the prosecution, was an old man in Loni village, in whose house PW-2 Sukh Dayal Malik was allegedly kept from 16.07.94 to 19.07.94. He deposed that Sukh Dayal Malik was brought to him by Pappu, Satbir and Amar for purchase of a plot. He conceded that Sukh Dayal Malik remained at his place from 16.07.94 to 19.07.94 and that he asked the accused to take him away on 18.07.94. Although he gave names of other accused namely Mukesh, Rocky Khanna, Ravi, Vishal and Rajesh, he could not identify them owing to weak eye sight. This witness was not cross examined. He also mentioned that PW-3 was taken around by the accused, with the objective of seeing plots, and that he (the witness) accompanied him once.

33. PW-13 Bhim Singh, former owner H.No.4225, Ajeet Nagar, Gandhi Nagar from where Sukh Dayal was rescued, reportedly sold the house to Jai Singh in 1978. He proved electricity bill of that property as Ex.Pw-13/A. PW-18 Inspector P.C. Mann was SI at PP ISBT; he joined the raiding party consisting of Inspector Om Prakash on the night of 19-20.07.1994. They had arrested accused Amar Mishra and Rajender @ Pappu near Ritz Cinema at 1:10 AM when they were coming on Motor cycle. Accused Amar possessed a country made pistol and live cartridge while Rajender had a country made pistol with three live cartridges. Their disclosure statements Ex.PW 18/A and Ex.PW 18/B were recorded on their arrest. Thereafter at around 3:30 AM in

terms of disclosure made, a raid was conducted at H. No.4225, Ajeet Nagar, Gandhi Nagar where victim Sukh Dayal Malik was rescued who was found in captivity of accused Satbir, Vishal and Ravi. Satbir was found in possession of a .315 bore loaded rifle and three live cartridges. He identified the rifle and four cartridges as Ex.P-1 and Ex.P-2/1 to P-2/4. Ex.PW 18/C is Memo of seizure of articles such as water bottle, glasses etc. and collectively identified them as Ex.P-3/1 to P-3/7.

34. PW-19 Inspector S.B. Yadav, posted as SI at PS Kashmere Gate on 17.07.94; he was handed over investigation of the case. On receiving secret information regarding whereabouts of the kidnappers of Sukh Dayal Malik, a raiding party was organized and the police arrested accused Amar Mishra and Rajender coming on Motor Cycle No. DL-4SB-9633. He deposed on the same lines as PW-18. He proved the sketch of the rifle seized from accused Satbir as Ex.PW 19/A. The site plan of the house from where Sukh Dayal Malik was rescued was placed on record as Ex.PW 19/B. The witness proved the Finger Print Report of the chance prints lifted from the spot as well as car DNC 2308 as Ex.PS. He deposed that the other accused persons were arrested as per prosecution story. Disclosure statement of accused Satbir was sought to be marked as Ex.PW 19/C. His personal search along with accused Vishal and Ravi @ Titu was proved and marked as Ex.PW 19/D to Ex.PW 19/F respectively. Ex.PW 19/G and Ex.PW 19/H are copies of disclosure of accused Mukesh and Rajesh Khanna. PW-20 was Sh. Vinod Kumar, Ld. MM, who conducted TIP of accused Rajesh Khanna @ Rocky. He proved the documents as Ex.PW 20/1 to Ex.PW20/11 which includes refusal of TIP proceedings as regards accused Amar, Rajender and Rajesh apart from the Section 164 Cr. PC statement of PW-6 Khem Chand.

35. PW-30 SI Sunil Kumar Sharma, joined the investigation with SHO Kashmere Gate in the raid near Ritz Cinema where accused Amar and Rajender were arrested. He also witnessed the seizure of seven cassettes by the police from complainant Ram Lal Malik apart from joining the arrest of Rajesh Khanna @ Tony on 12.01.95 Ex.PW 30/A and B are personal search memo and disclosure memo of that accused. PW-31 SI Jagpal Singh, was posted with Special Staff North District on 20.07.94 and was part of the team which arrested accused Rocky along with stolen motor cycle for which a separate FIR 463/94 was registered under Section 411 IPC. Ex. PW-31/A is recovery memo of stolen motor cycle DL-1SE-0091, unconnected with this case.

36. PW-33 SI Raj Singh, joined the investigation when Amar and Rajender @ Pappu were arrested near Ritz Cinema. He was also part of the team which raided Gandhi Nagar house and from where PW-2 Sukh Dayal was rescued and accused Ravi, Vishal and Satbir were also arrested. PW-34 Inspector Om Prakash, was the SHO Kashmere Gate. He led the team which arrested accused Amar and Rajender @ Pappu in the raid near Ritz Cinema. He also led the team which rescued Sukh Dayal apart from arrest of accused Mukesh in a pre-dawn car chase and seizure of Car DNC-2308, in which Sukh Dayal was kidnapped.

37. DW-1 Mukesh Nagar, was the lone defence witness examined by the accused. According to him on 20.07.94 he and Satbir were present at a house at Panchsheel Garden, Naveen Shahdara from where they were both arrested by the police late at night. He was let off on the next day whereas Satbir was detained. In his cross examination, by the prosecution, he agreed that House No.4225 Gandhi Nagar belonged to Satbir's uncle.

38. Now, as far as the abduction or kidnapping itself is concerned, the testimony of PW-2, the abducted person, is vital to the prosecution. He clearly deposed having been forced into a car, after he got down from the bus at Punjabi Bagh, around 08:30 P.M. that he travelled from his workplace to Punjabi Bagh has been proved by the testimonies of his co-passengers, who deposed as prosecution witnesses. He mentioned that he was forced into a car, and two of the abductors were seated in the front; the others were seated at the back. He clearly identified the abductors as Amar Mishra, Rajender, Ravi alias Titu, and Mukesh. Although in his chief examination as well as in answer to the leading questions put by the prosecutor, PW-2 did not mention about any threat of force, he volunteered in answer to a query in the course of cross examination on behalf of the accused that Mukesh pointed a knife at his throat and asked him to keep his head down. This aspect assumes some importance because the abducted party, PW-2 was not only forced to accompany the four abductors, mentioned by him but also points to the menace of possible violence held out if he were not to cooperate with the offenders. The rulings mentioned in the previous portion of this judgment, particularly *Vishwa Nath Gupta* (supra) clarify that the expression (about conduct of the accused) "*gives rise to a reasonable apprehension that such person may be put to death or hurt*" is an essential ingredient which the prosecution has to establish in order to secure a conviction of the accused charged with committing the offence under Section 364-A. Parliamentary intention to create a species of

abduction for ransom coupled with threats to life or of bodily injury, through the new provision is apparent from the three contingencies enacted for this purpose. The first is where the non-payment of ransom would lead to death or bodily injury; the second is where a threat to cause death or to cause bodily injury to the abducted person is held out; the third category is where the conduct of the abductors gives rise to *reasonable apprehension* that in the event of non-payment of ransom or not doing the thing demanded, the abducted individual or victim of the kidnapping would be put to death or hurt. If the intention of Parliament were to be gathered from the structure and phraseology of the provision, the mere holding out of a threat, either by words or even the menacing action conveyed to conduct that bodily injury or harm would be caused to the abducted person, if their demands are not complied with, if proved, is sufficient to say that such ingredient (for convicting the accused) has been fulfilled.

39. A Constitution Bench of the Supreme Court, while dealing with interpretation of provisions of TADA, underscored the need to adopt a purposive approach, in *Sanjay Dutt Versus State Through CBI, Bombay (II)* 1994 (5) SCC 410, saying that:

“14. The construction made of any provision of this Act must, therefore, be to promote the object of its enactment to enable the machinery to deal effectively with persons involved in, and associated with, terrorist and disruptive activities while ensuring that any person not in that category should not be subjected to the rigours of the stringent provisions of the TADA Act. It must, therefore, be borne in mind that any person who is being dealt with and prosecuted in accordance with the provisions of the TADA Act must ordinarily have the opportunity to show that he does not belong to the category of persons governed by the TADA Act. Such a course would permit exclusion from its ambit of the persons not intended to be covered by it while ensuring that any person meant to be governed by its provisions, will not escape the provisions of the TADA Act, which is the true object of the enactment. Such a course while promoting the object of the enactment would also prevent its misuse or abuse. Such a danger is not hypothetical but real in view of serious allegations supported by statistics of the misuse of provisions of the TADA Act and the concern to this effect voiced even by the National Human Rights Commission.

15. It is the duty of courts to accept a construction which promotes the object of the legislation and also prevents its possible abuse even though the mere possibility of abuse of a provision does not affect its constitutionality or construction. ”

While the threshold of what constitutes “reasonable apprehension” has not been prescribed vis-à-vis potential threats, held out by accused or abductors, to the life or limb of the abducted person, Courts have to be alive to the fact that Parliament left this with the intention that all eventualities cannot be

defined. Courts have to, perforce, adopt a case by case approach. While the task is seemingly difficult, in the absence of statutory guidelines, yet the expressions “conduct” and “reasonable apprehension” which control the apprehension of the victim (of death or injury) are by no means vague or unclear. It is not possible to exhaustively, or with precision outline all manner of conduct, either verbal or non-verbal, which can give rise to reasonable apprehension in the mind of a victim (of abduction). Much would depend on the proven facts. Yet, Parliamentary intention to deal sternly with this *species* of abduction, for ransom, or with the aim of coercing someone to do something which he (or she) would not have otherwise done, is clear; this intention is underscored by amendment to Section 39, Cr. PC, which obliges anyone in the know about the commission of the offence, to inform the nearest magistrate, or be the subject of the onus to explain his conduct in the event of a charge and a criminal trial. This intention is also underscored by the extremely limited sentencing choice, given to the courts; if the offence is proved, courts have the discretion to either award the death sentence (which can only be in the rarest of rare cases) or life sentence.

40. Having regard to the approach indicated above, it would be necessary to now discuss the evidence. The testimonies of PW-1 and PW-2 establish that the latter was forced into a car by the four accused, i.e Amar Mishra, Rajender @ Pappu; Mukesh and Ravi @ Titu. Mukesh held a knife at the victim’s throat; he was taken and detained for over three days. He mentioned having been kept in one place for about two days; he saw an aged man there. This aspect has been supported by the testimony of PW-6, who also said that someone (who he was told, by the abductors – whom he identified-wanted to see plots, with a view to buy one) was kept in his house for two days. PW-6 also specifically named Amar Mishra and Ravi @ Titto.

41. So far as the question of ransom is concerned, at the first place, exclusion of tape recorded conversation produced in the audio cassette Ex. P1/1 to P1/7 no doubt weakens the prosecution case yet the Court cannot over look the testimony of PW-1, the victim’s brother who clearly mentions having received a demand for payment of ₹20,00,000/- as ransom to secure the PW-2’s release. By itself this may be an innocuous piece of evidence, not implicating any of the accused. However, the positive identification of Amar Mishra, Mukesh and Rajender @ Pappu as abductors has to be seen in the context of PW-2’s rescue, deposition by him, and the circumstance which led to his recovery, are to be considered in the totality of the facts. The firing incident which led to arrest of Amar Mishra and Rajender @ Pappu and the later arrest of

Mukesh coupled with the rescue of PW-2 from a place mentioned by Amar Mishra and Rajender in their disclosure statements (recorded simultaneously), prove their knowledge regarding the whereabouts of place where the victim was kept under detention. Their disclosure statements also led to the arrest of Mukesh from a particular spot and area mentioned by them. As far as the other accused Ravi @ Titu is concerned PW-2 had identified him as one of the abductors; he was also arrested from the place where PW-2 was rescued.

42. Considerable arguments were made during the course of hearing that the ransom call was not shown to have been made by any of the accused; there was no connection between either of them and the call received by PW-1. The decision in *Mahavir Prasad Verma v. Surinder Kaur*, AIR 1982 SC 1043 and of a Division Bench of this Court, in *State v. Ravi*, 2000 (1) AD (Del) 222 have ruled that tape recorded conversations can be relied upon as corroborative evidence of conversation deposed to by parties to the conversation and in the absence of evidence (of such conversation) the tape recording is not proper evidence, and cannot be relied on. Similarly, the judgments reported as *R.M. Malkani v. State of Maharashtra*, AIR 1973 SC 417; *Ziyauddin Burhanuddin Bukhari v. Brijmohan Ramdass Mehra*, AIR 1975 SC 1788 and *Ram Singh v. Col. Ram Singh*, AIR 1986 SC 3 show what are the material tests for a tape recording to be admissible, as evidence. The Court had indicated that the fulfillment of the following preconditions was essential for a tape recording to be admissible in a trial:

- a) the voice of the speaker must be duly identified by the maker of the record or by others who recognize his voice. Where the maker has denied the voice it will require very strict proof to determine whether or not it was really the voice of the speaker.
- b) The accuracy of the tape recorded statement has to be proved by the maker of the record by satisfactory evidence direct or circumstantial.
- c) Every possibility of tampering with or erasure of a part of a tape recorded statement must be ruled out otherwise it may render the said statement out of context and, therefore, inadmissible.
- d) The statement must be relevant according to the rules of Evidence Act.
- e) The recorded cassette must be carefully sealed and kept in safe or official custody.
- f) The voice of the speaker should be clearly audible and not lost or distorted by other sounds or disturbance.

As stated earlier, if the tape recordings of the telephonic conversations had been admitted in evidence in the proper manner by proving the date and time when they were recorded as also appropriately identifying the voices in each tape and further testifying to the integrity of the tapes, the Court might have been able to consider the evidence. Absence of these requirements mandated as essential pre-requisites for the admission of tape recorded conversations during criminal trials, by virtue of judgments of the Supreme Court render, that piece of evidence inadmissible. We also notice that the prosecution did not care to seize the tapes within reasonable time and appear to have taken into possession only on 26.07.1994 i.e. almost a week after the accused were arrested. Furthermore we were not shown any effort on the part of the prosecution to take voice samples of the accused and send them for comparison by the Voice Analysis Expert of the Forensic Science Laboratories.

43. Though the tape-recording of conversation was not proved three very telling circumstances connected the appellants with the incident. The first is positive identification of the four accused (Amar Mishra, Rajender, Mukesh and Ravi) by PW-2. The second is the knowledge which Amar and Rajender had regarding the hide out of PW-2 where he was kept, which ultimately led to his rescue. The third is the subsequent arrest of Mukesh pursuant to the disclosure statements of Amar and Rajender and the presence of Ravi @ Titu at the place where PW-2 was detained and from where that appellant was arrested. These circumstances in this Court's opinion strongly prove that the said appellants were abductors and had kept PW-2 against his wishes unlawfully with the object to secure ransom which was conveyed to PW-1 through telephone.

44. So far as the submissions by the appellants that they refused to join the TIP since the prosecution case alleged that pursuant to the disclosure statements made by Amar Mishra and Rajender, PW-2 was recovered and rescued and argument which was also made by Mukesh, we are of the opinion that absence of the TIP or refusal under these circumstances does not have much impact in a case like the present one where the abducted or kidnapped person is rescued from a specific place known or was within special knowledge of the accused. Therefore, refusal by one or some of the accused to join the TIP is not of much consequence. However, this does not in any manner reflect on their role; the knowledge which Amar Mishra and Rajender had coupled with their identification as the abductors, sufficiently implicates them for the offence.

45. So far as the role and allegations against Mukesh are concerned, the prosecution case (believed by the trial court) was the disclosures by Amar Mishra and Rajender, which led to his arrest. A raiding party went to Yamuna Bazar, Kashmiri Gate; they had been told that a car bearing registration No. DNC-2308 would be waiting. The Police raiding team consisted of PW-34 and PW-23. According to these witnesses when the car occupants saw that the Police was approaching them, a firing incident took place which led to exchange of shots. The car went ahead and was followed or chased by the Police; it stopped at the Yamuna Bazar iron bridge and Mukesh tried to flee. At this stage he was over-powered and arrested. The prosecution has relied upon the deposition of PW-2 who categorically identified Mukesh as one of the abductors and even alleged that he held a knife to his throat and asked him to bend down in the car at the time of his abduction on 16.07.1994. The depositions of PWs-23 and 34 who testified about the facts led to the arrest of Mukesh and the firing incident have not been confronted; no cross-examination took place on behalf of the accused. Having regard to these facts, the involvement of Mukesh in the crime, for the commission of offence he was charged with, stands proved.

46. As regards Ravi, an argument made on his behalf was that no TIP was conducted and that no public witness was involved when he was arrested or searched to corroborate the presence in the place where PW-2 was rescued from. Ex. PW 19/E was pointed out to say that search memo clearly mentioned that no article was seized. Furthermore nothing incriminating either in the form of his having made a demand or recovery of any article pursuant to the disclosure statement made by him or anyone else was proved. These are no doubt circumstances which have manifested during the trial. However, what cannot be ignored is that PW-2 clearly identified Ravi as one of his abductors who was with him on 16.07.1994. It was noted in the earlier part of this judgment that PW-2 the victim identified four abductors and at the same time did not support the prosecution story regarding Satbir's involvement. Having regard to these facts, there can be no doubt about Ravi's involvement. As in the case of other appellants particularly Amar Mishra, Rajender, the TIP was of little consequence because PW-2 was with Ravi when the Police rescued him. Interestingly PW-2 also mentioned that all the four accused Amar Mishra, Rajender, Mukesh and Ravi were throughout with him. Having regard to this statement made in the course of victim's deposition which has remained unshaken despite cross-examination by all

the appellants, the prosecution's omission to recover any article from Ravi or that a TIP was not offered is of little significance. His role too has been clearly established in the commission of offence.

47. So far as the Appellant Satbir is concerned, the prosecution's allegation is that he was keeping guard over the victim PW-2 at the place where he was rescued from. The prosecution also banked on the recovery of a rifle, with a cartridge, and produced the seizure memos in support. The prosecution also relied on the fact that the premises where the victim PW-2 was found, and rescued from, belonged to Satbir's father. However, the single most important fatal circumstance to the entire prosecution case against this accused is that the victim PW-2, who was abducted and kept against his will for over 3 days (during which he was apparently not allowed to move around, and guarded by Satbir) did not support the allegations. Not only that, he positively denied Satbir's role, and mentioned that he was not with the abductors. In the light of this evidence, which can by no means be explained away as motivated, or the result of confusion, the deposition of the police witnesses about recovery of a gun, or cartridge, or about arrest of Satbir, he has to receive the benefit of doubt.

48. Counsel for the Appellants had relied on a Division Bench judgment of this court, reported as *Rafiq v. State*, ILR (2008) 2 Del 534 where it was held that:

"That apart, a mere demand of ransom amount for release of a kidnapped person, is not sufficient to attract application of Section 364 A IPC unless it is also proved that the kidnapped person was threatened with death or hurt or that the conduct of the kidnappers was such which could raise a reasonable apprehension that he could be put to death or hurt if the ransom amount was not paid. In the present case the child did not state that the appellants had at any point of time threatened to cause his death or hurt. Even the father of the child at no place in his statement testifies that the person making ransom calls had on any occasion threatened to kill the kidnapped child or cause hurt to him. The appellants at no stage by their conduct gave rise to a reasonable apprehension to the father or any member of his family that in the event of ransom amount being not paid, the kidnapped child would be put to death or hurt. The learned trial court in the impugned judgment while finding that the appellants from their conduct gave rise to reasonable apprehension that the kidnapped child would be put to death or hurt, did not spell out their particular conduct which could have given rise to the reasonable apprehension as aforesaid. There being total absence of evidence in regard to any threat to cause death or hurt to the kidnapped child and also for lack of evidence in regard to the appellants

conducting themselves in a way that could give rise to a reasonable apprehension that the child would be put to death or hurt, the ransom demands simplicitor could not have brought the offence within the ambit of Section 364 A IPC.”

It would be interesting to notice that in the decision reported as *Malleshi v. State of Karnataka*, (2004) 8 SCC 95, the Supreme Court discussed the necessary ingredients for the offence under Section 364-A IPC in the following terms:

*“In the instant case as the factual position found by the trial court and the High Court goes to show, the object of abduction was for ransom. This was clearly conveyed to the victim PW 2. He was even conveyed the amount to be paid. It cannot be laid down as a straitjacket formula that the demand for payments has to be made to a person who ultimately pays. By way of illustration it can be said that a rich businessman is abducted. He is told that for his release his family members have to pay a certain amount of money; but money actually belongs to the person abducted. The payment for release is made by the persons to whom the demand is made. The demand originally is made to the person abducted or kidnapped. After making the demand to the kidnapped or abducted person merely because the demand could not be conveyed to some other person, as the accused is arrested in the meantime, does not take away the offence out of the purview of Section 364-A. It has to be seen in such a case as to what was the object of kidnapping or abduction. The essence of abduction as noted above is causing to stay in isolation and demand for ransom. The demand in the present case has already been made by conveying it to the victim. In *Netra Pal case*¹ the High Court noted that there was no demand to pay. The factual position in that case as noted above is that the victim was a child to whom no demand could have been made. In that background the High Court took the view that Section 364-A has no application as no demand had been communicated. The position factually is different here. Ultimately the question to be decided is “what was the intention? Was it demand of ransom?” There can be no definite manner in which demand is to be made. Who pays the ransom is not the determinative fact, as discussed supra.”*

The above observations were followed in *Vinod v State of Haryana* 2008 (2) SCC 246 and *P. Liaquat Ali Khan v State of AP* 2009 (12) SCC 707. In *Shyam Babu v. State of Haryana*, (2008) 15 SCC 418, the essence of the provision was explained as follows:

“The wording itself suggests that when kidnapping is done with the threat to cause death or hurt to the kidnapped person or gives a reasonable apprehension that some person may be done to death or hurt or compels any Government, any foreign State or international intergovernmental organisation or any person to pay a ransom, the offence is complete.”

49. Thus, it is clear that to complete the offence, there should be proof that the abducted person, was, after abduction, either killed, or injured, or was threatened with such acts, or the conduct of the abductors would result in reasonable apprehension of such consequence. The demand for ransom is another essential ingredient. This court is of the opinion that the conveying of ransom, coupled with threat to life, or bodily injury, conveyed to the victim, either overtly, or by conduct (of the abductors) is sufficient to complete the offence. The object of the provision, introduced through the amendment is to tackle the menace of kidnapping for ransom, or holding people forcibly to achieve a specific illegal objective. It is not necessary that the abducted individual's family or friends are asked to pay; the object may be totally unconnected with them; yet, the demand would not be lawful. The injury or threat to injury part of the offence is couched in such wide terms that it is inessential for the prosecution to prove that the threat element was conveyed along with the demand for ransom. As long as the threat is discernable, and proved, the offence is said to have been established.

50. In view of the above discussion, the Court is of the opinion that the Trial Court's judgment, so far as it concerns the findings against Amar Mishra, Rajender @ Pappu, Mukesh and Ravi @ Titu does not call for interference. So their appeals are dismissed. Similarly, the findings recorded in the impugned judgment, against Satbir, cannot be sustained. They are set aside. The Appellant Amar Mishra is directed to report to the Trial Court, on 14-10-2011 and surrender, to serve the remainder of the sentence. The Registry is directed to ensure that the Lower Court records are returned, forthwith. Appeal No. 272/2009 is consequently allowed; the other appeals are dismissed.

S. RAVINDRA BHAT
(JUDGE)

G.P.MITTAL
(JUDGE)

SEPTEMBER 23, 2011