

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No. 65 of 2009

Against the judgment of conviction, dated 08.12.2008, and order of sentenced dated 11.12.2008, passed by Shri Ram Vinod Singh, learned Additional District and Sessions Judge, Fast Track Court, IV, Gaya, in Sessions Trial No. 10 of 2008/400 of 2006 arising out of Barachatti P.S. Case No. 97 of 2006

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Vikash Kumar Srivastava, son of Jai Nandan Prasad, resident of Naili, P.S. Magadha Medical College, district Gaya

..... Appellant

WITH

Criminal Appeal (DB) No. 66 of 2009

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Ritesh Kumar Rai @ Jitesh Kumar @ Jitesh Rai, son of Prabhat Kumar Rai @ Gopal Rai, resident of village Rampur, P.S. Rajpur, district Buxar

..... Appellant

WITH

Criminal Appeal (DB) No. 71 of 2009

- =====
1. Mithlesh Singh @ Raju Singh @ Raju, son of Kalika Singh, resident of village Dhawabachhua, P.S. Nawanagar, district Buxar
 2. Rakesh Gope, son of Balram Gope, resident of village Manita, P.S. Dhansor, district Dhanbad (Jharkhand)

..... Appellants

WITH

Criminal Appeal (DB) No. 82 of 2009

- =====
1. Niranjana Singh @ Malkhan Singh, son of Ramdeo Singh, resident of village Jaldaha, P.S. Ramgarh, district Kaimur at Bhabhua
 2. Santosh Kumar Singh @ Santosh Singh @ Pintu, son of Pradeep Kumar Singh, resident of village Jogiyan, P.S. Bikramganj, district Rohtas at Sasaram

..... Appellants

WITH

Criminal Appeal (DB) No. 298 of 2009

=====

Sonu Yadav @ Sunil, son of Ram Pravesh Yadav, resident of Chausa, P.S. Chausa, district Buxar (Bihar)

..... Appellant

Versus

The State of Bihar

..... Respondent **(In all the appeals)**

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Appearance :

(In CR. APP (DB) No. 65 of 2009)

For the Appellant : None

Ms. Soni Shrivastava, Advocate as Amicus Curiae

(In CR. APP (DB) No. 66 of 2009)

For the Appellant : None

Mr. Neeraj Kumar @ Sanidh, Advocate as Amicus Curiae

(In CR. APP (DB) No. 71 of 2009)

For the Appellants: None

Mr. Bharat Lal, Advocate as Amicus Curiae

(In CR. APP (DB) No. 82 of 2009)

For the Appellants: None

Mr. Patanjali Rishi, Advocate as Amicus Curiae

(In CR. APP (DB) No. 298 of 2009)

For the Appellant : None

Mr. Amish Kumar Jha, Advocate as Amicus Curiae

For the respondent : Mr. Ajay Mishra, A.P.P.

(In all the appeals)

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CORAM: HONOURABLE MR. JUSTICE I. A. ANSARI

AND

HONOURABLE MR. JUSTICE GOPAL PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE I. A. ANSARI)

Date: 31-03-2015

When the facts of a given case reveal that under a planned move, some persons, possessing fire-arms, dragged out major persons, forcibly from car and took them away with them, can these acts constitute an offence under Section 364A of the Indian Penal Code or not, if the accused persons are apprehended before any demand for ransom is made. This is a crucial question of law, which this set of appeals has thrown up for an answer.

2. Under the judgment, dated 08.12.2008, passed, in Sessions Trial No. 10 of 2008/400 of 2006, by learned Additional District and Sessions Judge, Fast Track Court, IV, Gaya, the appellants, Vikash Kumar Srivastava, Ritesh Kumar Rai @

Jitesh Kumar @ Jitesh Rai, Mithlesh Singh @ Raju Singh @ Raju, Rakesh Gope, Niranjana Singh @ Malkhan Singh, Santosh Kumar Singh @ Santosh Singh @ Pintu and Sonu Yadav @ Sunil, stand convicted under Section 364A read with Section 34 of the Indian Penal Code. Following their conviction, the accused-appellants have been sentenced to suffer imprisonment for life and pay a fine of Rs.2,000/- each and, in default of payment of fine, undergo simple imprisonment for three months.

3. The case of the prosecution, as unfolded at the trial, may, in brief, be set out as under:

(i) The informant, Deepak Kumar (P.W. 2), while working as Regional Manager, Jumerus Health Care Limited, at Banaras, was transferred to Ranchi. Pursuant to his transfer to Ranchi, Deepak Kumar (P.W. 2) proceeded, on 15.06.2006, in a Maruti Wagon R (hereinafter referred to as '*car*'), bearing registration No. UP 65 AD 4489, to Ranchi along with his mother, Purnima Singh, wife, Seema, and daughter, Swati, the vehicle being driven by Deepak Kumar's younger brother, Pushkar (P.W. 1).

(ii) Being driven in the *car*, as indicated above, when Deepak Kumar (PW 2) and his family reached a little ahead of a place called Barachatti, a white coloured *Tata Sumo*, bearing registration No. JH 07A 5328, (hereinafter referred to as '*Tata Sumo*'), overtook the informant's *car* and stopped the same by bringing the *Tata Sumo* in front of the informant's *car*. Seven

persons came down from *Tata Sumo*, surrounded the informant's *car*, opened the door of the *car* and, at the point of pistols, brought, out of the *car*, forcibly the informant, Deepak Kumar (PW 2), and also his brother, Pushkar, who was driving the *car*, took them to *Tata Sumo* and forced them to sit inside *Tata Sumo* and drove away. While so leaving, the miscreants took away the ignition key of the *car*. The purpose of taking away the key and Pushkar (PW 1) with them by the miscreants was obviously to immobilize the family of the informant so that they get stranded.

(iii) While the informant, on being abducted, as described hereinbefore, was being taken away by his abductors in the *Tata Sumo*, Sub Inspector of Police, Braj Kishore Mishra (PW 3), who was posted at Barachatti Police Station, was proceeding towards Bhabhua Bank, on Grand Trunk Road, with armed police personnel on patrolling duty. On the way, a truck driver informed the Sub Inspector of Police, Braj Kishore Mishra (PW 3), that two persons had been abducted from a red coloured *car* about five minutes ago and were being taken in a white coloured *Tata Sumo*. On receiving the said information, Sub Inspector, Braj Kishore Mishra (PW 3), along with other police personnel, proceeded ahead and found a red coloured *car* standing on the road and female persons, present inside the *car*, were inconsolably weeping.

(iv) On a query made by the police, the occupants of the *car* informed the police party that Deepak Kumar and Pushkar had been taken away, in a white coloured *Tata Sumo*, by some

criminals on the point of pistols towards eastern direction. This information was transmitted by Sub Inspector of Police, Braj Kishore Mishra (PW 3), to Sunil Kumar (PW 6), Officer-in-Charge, Barachatti Police Station. In search of the said white *Tata Sumo*, when Sub Inspector of Police, Braj Kishore Mishra (PW 3), reached near Chauparan, Itkhori, the drivers of various jeeps and passenger carrying vehicles informed the police party that the miscreants were fleeing away towards Itkhori. On reaching the local market at Marhga, Sub Inspector of Police, Braj Kishore Mishra (PW 3), was informed that the road, which goes towards Bagia, was usually taken by the criminals to escape. This fact was also informed by Sub Inspector of Police, Braj Kishore Mishra (PW 3), to the Officer-in-Charge, Barachatti Police Station, and the Officer-in-Charge, Barachatti Police Station, informed, in turn, PW 4 (Officer-in-Charge, Itkhori Police Station) about the said abduction.

(v) While Sub Inspector of Police, Braj Kishore Mishra (PW 3), proceeded further, Officer-in-Charge, Barachatti Police Station, got Itkhori sealed by police personnel so as to stop anyone from escaping. When the *Tata Sumo*, wherein Deepak Kumar and Pushkar were being carried away, reached Itkhori, the occupants of *Tata Sumo* noticed a police jeep coming from the opposite direction. In the said jeep, Officer-in-Charge, Barachatti Police Station, was present along with other police personnel, who were armed with SLR. Though the police party wanted to stop the said *Tata Sumo*, the *Tata Sumo* did not stop. A constable came down

from the jeep and hit the windscreen of *Tata Sumo* with the butt of his SLR. Though the occupants, sitting inside the *Tata Sumo*, snatched away the SLR, they did not know how to use SLR.

(vi) In the meanwhile, the *Tata Sumo* moved ahead, but seeing the Special Task Force, armed with machine guns, standing near Itkhori Police Station, *Tata Sumo* tried to over speed and, as a result thereof, the *Tata Sumo* capsized. The police personnel, then, caught hold of those, who were occupants of the *Tata Sumo*, and brought all of them, including Deepak Kumar and Pushkar, to Barachatti Police Station, where Deepak Kumar gave his statement, in writing, at 04:30 P.M, as his *fardbeyan*, stating therein as to what had happened.

4. Treating the said *fardbeyan* as the First Information Report, Barachatti P.S. Case No. 97 of 2006 was registered, under Section 364A of the Indian Penal Code, against the accused-appellants. Police arrested those, who had abducted Pushkar (PW 1) and Deepak Kumar (PW 2) and, on completion of investigation, laid a *charge sheet*, under Section 364A of the Indian Penal Code, against the accused-appellants.

5. At the trial, when a *charge*, under Section 364A of the Indian Penal Code, was framed against the accused-appellants, they all pleaded not guilty thereto.

6. In support of their case, prosecution examined altogether six witnesses. The accused-appellants were, then, examined under Section 313 (1) (b) of the Criminal Procedure

Code and, in their examinations aforementioned, they denied that they had committed the offence, which was alleged to have been committed by them, the case of the defence being that of denial.

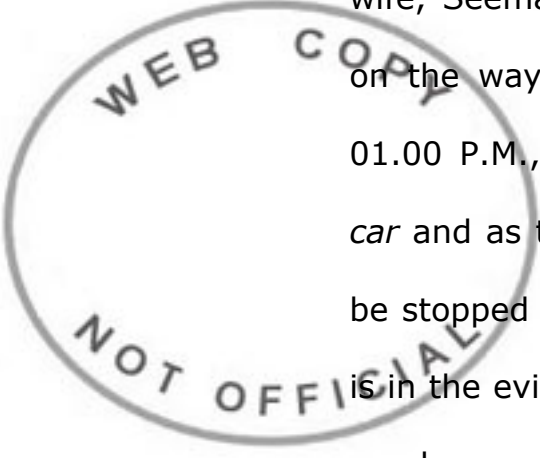
7. Having, however, arrived at the finding that the accused-appellants had been proved guilty of the *charge* under Section 364A of the Indian Penal Code, the learned trial Court convicted them accordingly. Following their conviction, sentence, as mentioned above, has been passed against the accused-appellants.

8. Aggrieved by their conviction and the sentence passed against them, the convicts have preferred these appeals.

9. All these four appeals having, thus, arisen out of the impugned judgment of conviction, dated 30.01.2008, and the impugned order of sentence, dated 31.01.2008, these appeals have been heard together and are being disposed of by this common judgment and order.

10. We have heard Ms. Soni Shrivastava, Mr. Neeraj Kumar @ Sanidh, Mr. Bharat Lal, Mr. Patanjali Rishi and Mr. Amish Kumar Jha, learned Counsel, appearing as *Amicus Curiae*, and Mr. Ajay Mishra, learned Additional Public Prosecution, on behalf of respondent State.

11. While considering these appeals, it may be noted that broadly in tune with each other Deepak Kumar (P.W. 2) and Pushkar (PW 1) have deposed that on 15.06.2006, while they was going to Ranchi from Banaras in a *car*, bearing registration No. UP



65AD 4489, with their mother, Purnima Singh, Deepak Kumar's wife, Seema, and Deepak Kumar's daughter, Swati, and reached, on the way, a little ahead of Barachatti Police Station, at about 01.00 P.M., a white coloured *Tata Sumo*, suddenly, overtook the *car* and as the *Tata Sumo* came in front of the *car*, the *car* had to be stopped and the *Tata Sumo*, too, stopped in front of the *car*. It is in the evidence of P.W. 1 and PW 2 that six persons, armed with revolvers, came down and pointing their fire-arms to them (P.W. 1 and PW 2), they forcibly took them (PW 1 and P.W. 2) to the *Tata Sumo* and forced them to sit inside the *Tata Sumo*. It is also in the evidence of PW 1 and P.W. 2 that before taking them (P.W. 1 and PW 2) to the *Tata Sumo*, the miscreants had also snatched away the key of the *car*.

12. It is also in the evidence of PW 1 and P.W. 2 that while the *Tata Sumo* was being driven towards Chauparan at high speed and turned towards Itkhori, they came to a local market, but as they proceeded ahead, a police jeep was found coming from the opposite direction, the police personnel were armed with SLR and though the police personnel tried to stop the *Tata Sumo*, the *Tata Sumo* was not stopped and, in the meanwhile, a constable came down from the police jeep and hit on the windscreen of the *Tata Sumo* from the butt of his SLR and though the miscreants snatched away the SLR, they did not know how to fire from the said SLR and when the *Tata Sumo* moved ahead, the Special Task Force personnel, armed with machine guns, were seen standing near

Itkhori Police Station and as the miscreants tried to run away with the *Tata Sumo*, the *Tata Sumo* overturned, the police, then, caught hold of the miscreants and arrested them and, then, all of them were taken to Itkhori Police Station and the persons, who had been caught red-handed, disclosed their names to the Officer-in-Charge, Barachatti Police Station, and, then, he (PW 2), too, gave his statement, which is Exhibit 1.

13. Though P.W. 1 and P.W. 2 were put to cross-examination by the defence, nothing could be elicited by the defence to show that their evidence were untrue or unreliable. In fact, notwithstanding their cross-examination, P.W. 1 and P.W. 2 withstood well the test of cross-examination and their evidence remained, thus, wholly unshaken on all material aspects.

14. We, therefore, see no reason not to believe the evidence of P.W. 1 and P.W. 2 and if their evidence is believed, which we have every reason to believe, it clearly follows that the accused-appellants were the ones, who had forcibly taken away P.W. 1 and P.W. 2 from their vehicle, i.e., the *car*, to the *Tata Sumo* and when the accused-appellants were heading towards an unknown destination, police intervened and the accused-appellants were apprehended and placed under arrest.

15. The above inference gets strengthened, when we take note of the evidence of P.W. 3, who was, at the relevant point of time, functioning as a Sub Inspector of Police, Barachatti Police Station.

16. The evidence of PW 3 is that the occurrence took place on 15.06.2006, when he (PW 3) was posted, at Barachatti Police Station, as a Sub-Inspector of Police.

17. It is in the evidence of PW 3 that at on the day of the occurrence, at about 01:15 PM, they were going to Bhabhua Bank via Grand Trunk Road in a jeep with armed personnel on day light patrolling duty for bank checking and when they reached near Haraipa Bridge, a truck driver stopped them and told them that two persons had been abducted from a red coloured *car* and were being taken away in a white coloured *Tata Sumo*. The truck driver also told the policemen that the occurrence had taken place just five minutes ago.

18. Having heard what the truck driver had said, when PW 3, along with his armed police personnel, proceeded ahead, they found a red coloured *car* standing and the female persons, sitting inside the car, crying inconsolably and, on being asked by PW 3, the women replied that Deepak Kumar and Pushkar were being taken away, in a white coloured *Tata Sumo* by criminals at the point of pistols, towards eastern direction, whereupon PW 3 transmitted the information, with regard to the abduction of Deepak Kumar and Pushkar, to PW 6 (Sunil Kumar), i.e., the Officer-in-Charge, Barachatti Police Station, on mobile set and rushed towards the eastern direction.

19. It is also in the evidence of PW 3 that when they reached near Chauparan Itkhori Turning, the drivers of jeeps and

passenger carrying vehicles told them that the accused were fleeing away towards Itkhor and, upon reaching Maharajganj, where *haat* (i.e., local market) was held, when they made enquiries, they were informed that the accused were fleeing away in the direction of Padya from the Katchchi road, which goes towards Itkhor market.

20. PW 3, having transmitted this development, too, to the Officer-in-Charge (PW 6), started following the said accused and, on the way, he was informed by the Officer-in-Charge (PW 6) that he had sealed Itkhor so that the accused do not escape and when PW 3, accompanied by his police party, reached near Itkhor Police Station, he found commotion all around as the *Tata Sumo* had overturned.

21. PW 3 has deposed that Deepak Kumar and Pushkar were recovered and the seven miscreants, who were trying to flee away in the western direction after coming out of the overturned *Tata Sumo*, were caught after being chased.

22. PW 3 has also deposed that two pistols of 9 mm bore, three country-made pistols and *cartridges* were recovered from the criminals and the same were seized.

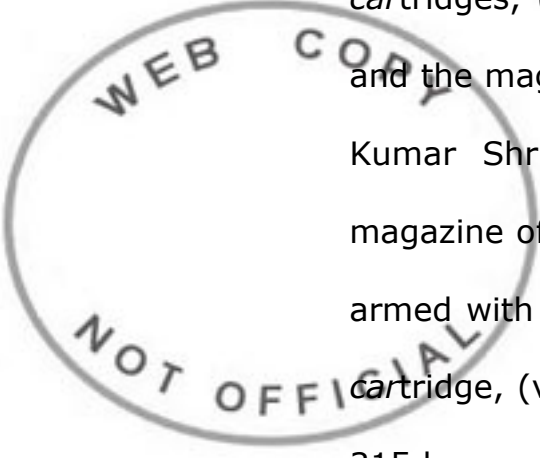
23. Lending support to the evidence of P.W. 3, PW 4, who was, at the relevant point of time, Officer-in-Charge, Itkhor Police Station, has deposed that on 15.06.2006, he received information, on wireless, that some miscreants were fleeing away, in a white coloured *Tata Sumo*, towards Chauparan after

abducting two persons from the jurisdiction of Barachatti Police Station and they might flee towards Itkhor and, on receiving this information, he (PW 3), along with the armed police personnel, proceeded to verify the said information and when he reached near the Post Office, at Itkhor Bazar, he saw a white coloured *Tata Sumo*, coming, at a very high speed, from the direction of Chauparan and moving towards Itkhor.

24. It is in the evidence of PW 4 that when he tried to stop the said *Tata Sumo*, the miscreants, who were in the *Tata Sumo*, started firing at them and tried to flee away taking the *Tata Sumo* on the right flank of the road and when he (PW 3), after informing Kartal Police Station, on wireless, tried, again, to stop the said *Tata Sumo*, the miscreants resorted to firing, whereupon the police personnel, too, fired and when the *Tata Sumo* reached near Itkhor Police Station, one of the bullets, fired by the police party, hit the rear right side tyre of the *Tata Sumo* and the *Tata Sumo* rolled down.

25. It is also in the evidence of PW 4 that the accused persons got down from the vehicle and started fleeing towards Prem Nagar village, but PW 4, along with the police personnel, chased them and caught hold of them.

26. It is the further evidence of PW 4 that the apprehended persons were accused (i) Niranjana Singh @ Malkhan Singh, armed with regular pistol of 9 MM made in USA, the magazine of which was loaded with four bullets, (ii) Sonu Yadav,



armed with country-made pistol of 315 bore and three live cartridges, (iii) Mithlesh Kumar Singh, armed with pistol of 9 mm and the magazine of which was loaded with two bullets, (iv) Vikash Kumar Shrivastava, armed with regular pistol of 9 mm, the magazine of which was loaded with three bullets, (v) Ritesh Kumar armed with a country-made loaded pistol of 315 bore and one live cartridge, (vi) Santosh Kumar armed with a country-made pistol of 315 bore and one live cartridge, and (vii) Rakesh Gope was driving the said *Tata Sumo*. The said names were disclosed by the accused themselves during their interrogation and, having seized the said arms and ammunitions, a seizure list was prepared in presence of two independent witnesses. In this regard, Itkhori P.S. Case No. 74 of 2006, dated 15.06.2006, under Sections 353, 414 and 307 of the Indian Penal Code and 25(1-B)(a)/26/27/35 of the Arms Act, 1959 was registered.

27. Closely following the evidence of PW 1, PW 2, PW 3 and PW 4, it is in the evidence of PW 5, who was posted, at the relevant time, as Assistant Sub-Inspector of Police, Itkhori Police Station, that on 15.06.2006, at about 3:00 to 4:00 hours, he (PW 5) received a wireless message from the Officer-in-Charge, Mari Police Station, that a *Tata Sumo* had been going at a very high speed towards Chatra after abducting two persons and, on receiving the said message, he (PW 5), along with reserved police force, came to the road and saw the said *Tata Sumo* coming from the direction of Chauparan and when he tried to stop the said *Tata*

Sumo, the driver of the said *Tata Sumo* tried to speed the *Tata Sumo* away, but the *Tata Sumo* overturned on G.T. road in front of the Police Station and, PW 4, who was chasing the said *Tata Sumo*, reached there. It is also in the evidence of PW 5 that the police party caught hold of the miscreants, who were, in the meanwhile, trying to flee away and also recovered the two abducted persons, namely, PW 1 and PW 2.

28. It is also in the evidence of PW 5 that the miscreants disclosed their names as Niranjana Singh @ Malkhan Singh, Sonu Yadav, Mithilesh Kumar Singh, Ritesh @ Ritesh Kumar Rai, Santosh Singh, Vikash Kumar Shrivastava and Rakesh Gope and from their possession, three pistols of 9 MM, three country-made pistols, one unloaded magazine of 9 MM pistol and six bullets of .315 having been recovered, the same were seized. With regard to the seizure of the arms and ammunitions, a separate case was lodged at Itkhori police station.

29. Coupled with the above, the evidence of PW 6, the then Officer-in-Charge, Barachatti Police Station, is that he (PW 6), on 15.06.2006, at about 01:30 PM, received an information, on his mobile set, from PW 3 that two persons had been abducted near Araiya bridge on G.T. Road and the accused persons had gone towards the direction of Chauparan in a white coloured *Tata Sumo* and he (PW 3) was following them. It is also in the evidence of PW 6 that having entered the said information in the station diary, he (PW 6) contacted his superior officers and also Itkhori Police

Station, which has the jurisdiction of the area from where the miscreants were fleeing away after abducting the two persons, and proceeded by a private vehicle, along with police personnel, to apprehend the miscreants and when he reached Itkhor, he found that the seven miscreants were already arrested, along with arms and ammunitions, by Itkhor Police and the two abducted persons had been recovered, whereupon he (PW 6) recorded the *fardbeyan* of PW 2, Deepak Kumar, and also the statement of the other victim as well as the statements of the accused persons.

30. At the time of hearing of these appeals, nothing, in particular, could be pointed out to show that the evidence of PW 3, PW 4, PW 5 and/or PW 6 were not reliable. In fact, we find that the defence could elicit nothing to show that their evidence is not trustworthy or reliable.

31. Considering the fact that the evidence, adduced by the prosecution, has remained unshaken and what emerges is that the accused-appellants had, on the point of fire-arms, forcibly taken away P.W. 1 and P.W. 2 from the *car* to the said *Tata Sumo* in the manner as already indicated above and when the accused-appellants were taking the victims to an undisclosed destination, police intervened and succeeded in apprehending the abductors and, thus, P.W. 1 and P.W. 2 were freed from the custody of the accused-appellants, who were the abductors.

32. In the face of the evidence, which has emerged from the evidence on record, the question is: *whether the accused-*

appellants could have been charged and convicted under Section 364A of the Indian Penal Code?

33. For the purpose of clarity, Section 364A of the Indian Penal Code is reproduced below:

"364A–Kidnapping for ransom, etc.– Whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction, and threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt, or causes hurt or death to such person in order to compel the Government or any foreign State of international or inter-governmental 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."

34. A minute reading of the provisions embodied in Section 364A of the Indian Penal Code shows that though the heading of Section 364A reads, "*Kidnapping for ransom, etc.,*" the body of Section 364A makes it abundantly clear that this penal section does not merely deal with *kidnapping*, but also with *abduction*. Section 359 of the Indian Penal Code makes it clear that *kidnapping* is of two kinds: *kidnapping from India* and *kidnapping from lawful guardianship*.

35. What constitutes *kidnapping from India* and what constitutes *kidnapping from lawful guardianship* stand defined



under Sections 360 and 361 of the Indian Penal Code respectively.

36. As against the fact that *kidnapping* is of two kinds, namely, *kidnapping from India* and *kidnapping from lawful guardianship*, Section 362 of the Indian Penal Code defines abduction and states, "*whoever by force compels, or by any deceitful means induces, any person to go from any place, is said to abduct that person*".

37. What is, however, of some significance to note is that while *kidnapping*, be the *kidnapping from India* or *from lawful guardianship*, is punishable by Section 363 of the Indian Penal Code for a term, which may extend to 7 (seven) years coupled with fine, as *abduction*, without anything more, is not punishable under the Indian Penal Code. Only under such circumstances as have been specified by the Indian Penal Code that *abduction* becomes punishable. One of such a class of cases is covered by Section 364A of the Indian Penal Code.

38. In the present case, neither PW 1 nor PW 2 was below the age of sixteen years. The question, therefore, of *kidnapping them from lawful guardian* did not arise. Similarly, when PW 1 and PW 2 were not taken away beyond the limits of India, the question of treating them as having been *kidnapped from India* does not arise. Their being taken away by the accused-appellants in the manner as has surfaced from the evidence on record makes their case a case of *abduction* inasmuch as they were compelled by posing threat to their lives to come out of the car

and, then, be taken away forcibly at the point of fire-arms.

39. The case at hand, therefore, is squarely covered by the term '*abduction*' as defined by Section 362 of the Indian Penal Code.

40. In order to attract the penal provisions of Section 364A of the Indian Penal Code, it is not necessary that the *abducted person* must actually be threatened with death or hurt. Far from this, it is sufficient, in order to attract Section 364A of the Indian Penal Code, if the conduct of a person gives rise to a reasonable apprehension that the *abducted person* may be put to death or hurt. This apart, only demand for *ransom* is not a punishable offence under the Indian Penal Code; rather, a microscopic reading of Section 364A of the Indian Penal Code clearly shows that an *abduction* of the kind (as 364A of the Indian Penal Code envisages) would be penalized if the *abduction* is in order to compel the Government or any foreign State or international or inter-governmental organization or any other person '**to do**' or '**abstain from doing any act**' or '**to pay a ransom**'.

41. We may also hasten to point out that though the heading of Section 364A mentions *ransom*, Section 364A does not deal with *ransom* alone inasmuch as 364A would also be attracted if a person is forced *to do an act or abstain from doing an act*. For instance, an Engineer may be abducted and he may be threatened with death unless he passes the bill of the Contractor, who has

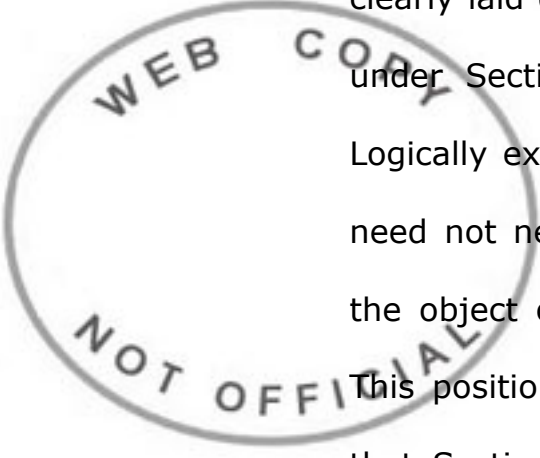
abducted the Engineer, or an Engineer's child may be *kidnapped* and the *kidnapper* may ask the Engineer not to pass the bill of a particular contractor or else, the Engineer's kidnapped child will be put to death. In either of the circumstances aforementioned, Section 364A of the Indian Penal Code would, indeed, stand attracted.

42. Situated thus, it becomes abundantly clear that *abduction* to demand a *ransom* is not the only punishable act under Section 364 A of the Indian Penal Code. Far from this, if *abduction*, as envisaged by Section 364A, is in order to compel a person 'to do' or 'abstain from doing' any act, the *abduction* would become punishable under Section 364A of the Indian Penal Code.

43. Coupled with the above, it is not necessary, in order to attract Section 364 A, that *ransom* must be obtained or realized. It would be sufficient if abduction is for the purpose of compelling a person to pay *ransom*.

44. Similarly, it is not essential in order to attract Section 364A that following *abduction*, a person, who is compelled to do an act, has done the act, or a person, who has *abstained from doing an act*, has not done the act; rather, it is sufficient if the object of *abduction* is to compel a person 'to do any act' or 'abstain from doing any act'. It is, therefore, immaterial whether the person, who is sought to be so compelled, eventually, *does the act* or *abstains from doing the act* or *not*.

45. No wonder, therefore, that in **Malleshi v. State of**



Karnataka, reported in **(2004) 8 SCC 95**, the Supreme Court has clearly laid down that what is required to be determined, in a case under Section 364A, is the object of *kidnapping* or *abduction*. Logically extended, it would mean that actual demand for *ransom* need not necessarily be made in order to attract Section 364A if the object of *abduction* is, otherwise, proved to receive *ransom*. This position of law becomes clearer if we bear in mind the fact that Section 364A uses the expression '*in order to compel*'. The object of kidnapping or abduction is, therefore, an essential ingredient for attracting the provisions of Section 364A and this Section (i.e., Section 364A) does not rest on actual making of demand for *ransom* or any actual asking of any specific act to be done or any specific act not to be done. As long as the object is inferred to have been covered by the provisions of Section 364A, the offence, if other ingredients of Section 364A are, otherwise, satisfied, would be held to have been made out.

46. In the case at hand, we have already indicated above that PW 1 and PW 2 were *abducted* at the point of fire-arms. The evidence also discloses that the *abductors* were armed with lethal weapons inasmuch as three pistols of 9 MM and three country-made pistols, along with one unloaded magazine of 9 MM and six bullets of .315, have been recovered from their possession. The fact that accused persons were possessing fire-arms and the evidence that they waylaid the victims in order to abduct them shows that the crime was committed in an organized manner with

a plan having been put into place before executing the plan. Thus, not only the victim was identified, but the plan to execute *abduction* was also conceived of from before.

47. When, at the point of fire-arms, PW 1 and PW 2 were forced to enter into, and sit inside, the *Tata Sumo* and taken away, it is logical to infer that they were being taken away in order to obtain *ransom* or in order to make PW 1 and PW 2 or anyone of them to do or abstain from doing an act, which they would have, otherwise, abstained from doing or had done.

48. Situated thus, we have no hesitation in our mind that the facts of the present case clearly attract the penal provisions of Section 364A inasmuch the conduct of the accused-appellants did give rise to a reasonable apprehension that PW 1 and PW 2 would be put to death unless they pay *ransom* or their family pays *ransom* or they do what they would not have, otherwise, done or they would abstain from doing what they would have, otherwise, done.

49. It has been pointed out by learned Amicus Curiae that the acts of the accused-appellants may constitute an offence under Section 364 or Section 365 of the Indian Penal Code.

50. While dealing with the above submissions, we need to point out that there is nothing to show that PW 1 and PW 2 were being abducted with intent to secretly and wrongly keep them confined. In the absence of any evidence on record indicating to the effect that the abduction of PW 1 and PW 2 was with intent to

secretly and wrongfully keep them confined, Section 365 of the Indian Penal Code cannot be said to have been attracted.

51. Similarly, being armed with lethal weapons, such as, the ones, which the appellants, as abductors, had actually carried, they could have easily killed, at the very place of abduction, PW 1 and/or PW 2 if they had any intention to kill any of the said two brothers. When the accused-appellants could *abduct* PW 1 and PW 2, in broad-day light, from the highway leaving alive the mother, wife and daughter of PW 2, who had witnessed the abductors, it is clear that had the accused-appellants intended to commit *murder*, they would have done so at the very place of abduction. The same has, however, not been done and, hence, there is no question of seeking to apply Section 364 of the Indian Penal Code to the facts of the present case.

52. In the case at hand, no *ransom* has been, admittedly, demanded.

53. It is, however, in the evidence of P.W. 2, Deepak Kumar, that they were abducted by the accused for the purpose of obtaining money, i.e., *ransom*. This apprehension, which has been expressed by P.W. 2 in his evidence, is not unfounded and has not been disputed by the defence. It is required to be pointed out that actual payment of *ransom* need not necessarily be made. If the conduct of an abductor gives rise to an inference that the abduction is with the object of obtaining *ransom*, then, offence, under Section 364A, would be made out.

54. Be that as it may, in the case at hand, though there is no specific demand for *ransom*, yet, as the facts and attending circumstances of the case discernible from the evidence on record clearly disclose, the object of the accused-appellants was to either obtain *ransom* or to make PW 1 and/or PW 2 and/or their family to do or abstain from doing any act. The acts of the accused-appellants, therefore, stood squarely covered by the penal provisions embodied in Section 364A of the Indian Penal Code.

55. What crystallizes from the above discussion is that the evidence on record, adduced by the prosecution, proved beyond reasonable doubt commission of the offence under Section 364A of the Indian Penal Code.

56. We are, therefore, unable to hold that the finding of guilt, reached by the learned trial Court, suffers from any infirmity, legal or factual.

57. In the result and for the reasons, discussed above, these appeals fail and the conviction of the accused-appellants, under Section 364A read with Section 34 of the Indian Penal Code as well as sentence passed against them, are hereby upheld. The appeals shall, accordingly, stand dismissed.

58. Since two of the accused-appellants, namely, Mithilesh Singh @ Raju Singh @ Raju of Criminal Appeal (D.B.) No. 71 of 2009 and Niranjana Singh @ Malkhan Singh of Criminal Appeal (D.B.) No. 82 of 2009 are on bail, their bail bonds are hereby cancelled and their sureties are discharged and the said two

appellants are hereby directed to surrender forthwith, in the learned trial Court, in order to serve out the sentence of imprisonment, which has been passed against them.

59. Let the Amicus Curiae be paid a fee of Rs. 5,000/-.

60. Registry shall, forthwith, send a copy of this judgment and order to the learned trial Court, along with the Lower Court Records.

(I. A. Ansari, J.)

(Gopal Prasad, J.)

N.A.F.R.
S.A./Kundan/-

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