

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.306 of 2015

Arising Out of PS. Case No.-264 Year-2008 Thana- MAKHDUMPUR District- Jehanabad

Sanjay Kumar Pandey, Son of Rameshhwar Pandey. Resident of Village -
Ekma, P.S. - Ekma, District - Saran (Bihar).

... .. Appellant/s

Versus

The State Of Bihar

... .. Opposite Party

with
CRIMINAL APPEAL (DB) No. 909 of 2014

Arising Out of PS. Case No.-264 Year-2008 Thana- MAKHDUMPUR District- Jehanabad

1. Munnilal Mahto, son of late Ramdahin Mahto, resident of village Nawada
P.S. Jalalpur District Chhapra (Saran).
2. Ajay Singh, son of late Lalan Singh, resident of village Lejuar, Daudpur
District Chhapra (Saran)

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

with
CRIMINAL APPEAL (DB) No. 44 of 2015

Arising Out of PS. Case No.-264 Year-2008 Thana- MAKHDUMPUR District- Jehanabad

Umanath Tiwari, son of Mahavir Tiwari, resident of village - Chitrawalia, P.S.
Ekma, District Saran at Chapra

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 306 of 2015)

For the Appellant/s : Mr. Sanjay Kumar Singh, Advocate

For the Respondent/s : Sri Mayanand Jha, A.P.P.

(In CRIMINAL APPEAL (DB) No. 909 of 2014)

For the Appellant/s : Sri Bikramdeo Singh, Advocate

Sri Narendra Kumar, Advocate

For the Respondent/s : Sri Ajay Mishra, A.P.P.

(In CRIMINAL APPEAL (DB) No. 44 of 2015)



For the Appellant/s : Sri Sachchidanand Chaudhary, Advocate
Mr. Lovekush Kumar, Advocate
For the Respondent/s : Sri Ajay Mishra, A.P.P.

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
and
HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

Date : 18-04-2019

1. Appellants in all the aforesaid three appeals were convicted and sentenced by common judgment of the trial court and as such all the aforesaid three appeals were taken up together under the heading “For Hearing” and are being disposed of by this common judgment.

2. All the appellants by judgment dated 21.10.2014 were convicted for the offence under Section 120-B, 364-A/120-B and 379/120-B of the Indian Penal Code, 1860 [hereinafter referred to as the “I.P.C.”]. In addition Sanjay Kumar Pandey [appellant in Cr. Appeal (D.B.) No. 306 of 2015] has also been held guilty and convicted for the offence under Section 411 of the I.P.C. By order dated 01.11.2014 all the appellants under Section 364-A/120-B of the I.P.C. were sentenced to undergo imprisonment for life and to pay a fine of Rs. 100000/- each. In case of default in payment of fine all were sentenced to undergo rigorous imprisonment for three years. Under Section 379/120-B of the I.P.C. no separate



sentence was imposed since all the appellants were already sentenced to undergo imprisonment for life under Section 364-A/120-B of the I.P.C. Appellant- Sanjay Kumar Pandey under Section 411 of the I.P.C. by the same order i.e. order dated 01.11.2014 has further been sentenced to undergo rigorous imprisonment for three years. All the sentences were directed to run concurrently. The judgment of conviction and sentence has been passed by Sri Raghawendra Kumar Singh, learned Additional Sessions Judge 1st , Jehanabad in Sessions Trial No. 457 of 2010 / 63 of 2010 arising out of Makhdumpur P.S. Case No. 264 of 2008.

3. Short fact of the case is that on 24.10.2008 a written information was submitted addressed to the Officer-in-charge, Belaganj Police Station, District -Gaya by Mantu Kumar (P.W. 10). In the written report it was indicated that the informant while residing in Gaya was driving a Bolero vehicle bearing registration no. BR.-43A-1772 the owner of which was one Sanjeet Prakash (P.W. 13) since last five months. It was indicated that the owner of the said vehicle was plying his vehicle on hire. The owner often used to deal in respect of the rent of the vehicle. On 24.10.2008 customers who had stayed



in Satkar hotel near Gaya Railway Station had booked the said Bolero from his owner for roaming to Barabar Hills. On 24.10.2008 in the morning at 10.00 he along with his owner had gone to Satkar hotel and carrying all the said four persons had gone to Barabar Hills on a tour. The rent was fixed by his owner. At about 12.00 noon they reached Barabar hills near a Police camp and went to hill. After about ten minutes one person from amongst the four returned back and taking out one cold drink (*Frooti*) from the vehicle asked him to drink. The informant thereafter consumed the *Frooti* and subsequently he felt drowsiness and thereafter beneath a tree near the Police camp he slept and about 4.00 in the evening he was awoken by one person (shepherd). He noticed that vehicle which was parked at the place was not there. He tried to search for the vehicle however neither he could notice the vehicle nor he found the owner of the vehicle and all four persons for a long time. He started searching but all effort went in vein. Thereafter he returned back to his home at Khedarpur on foot. He noticed that the parents of the vehicle owner searching them had already arrived. The informant further stated that from his pocket Nokia Mobile No.



9931722199 with keys of the vehicle and purse were missing. The informant claimed that his owner namely- Sanjeet Prakash by aforesaid unknown four accused persons was kidnapped after the informant was administered sedative by way of offering *Frooti* along with the white Bolero vehicle. He requested for taking appropriate action and searching for his owner- Sanjeet Prakash and also the vehicle i.e. white colour Bolero. The said written report was forwarded by S.H.O., Belaganj Police Station to Makhdumpur Police Station, Jehanabad on 24.10.2008 itself and thereafter a formal F.I.R. vide Makhdumpur P.S. Case No. 264 of 2008 was registered on 25.10.2008 at 4.00 P.M. for the offence under Section 364/ 379/ 120(B) of the I.P.C. against four unknown accused persons. After registering F.I.R. the case was investigated and charge sheet was submitted on 24.01.2009 against nine accused persons, namely: (1) Munnilal Mahto (appellant no. 1 in Cr. Appeal (D.B.) No. 909 of 2014), (2) Umanath Tiwari (sole appellant in Cr. Appeal (D.B.) No. 44 of 2015), (3) Vinod Tiwari (case separated), (4) Sanjay Kumar Pandey (sole appellant in Cr. Appeal (D.B.) No. 306 of 2015), (5) Vinod Giri (case separated), (6) Lalo



Sahani (acquitted), (7) Ajay Singh (appellant no. 2 in Cr. Appeal (D.B.) No. 909 of 2014), (8) Mahesh Sahani (acquitted); and (9) Niraj @ Niranjan Kumar (not tried with the appellants) keeping investigation pending against others. After submission of charge sheet on 24.01.2009 the learned Chief Judicial Magistrate, Jehanabad took cognizance of offence. Subsequently the case of only six accused persons including the aforesaid four appellants was committed to the court of Sessions on 20.12.2010 and it was numbered as Sessions Trial No. 457 of 2010/63 of 2010. On 30.06.2011 after commitment charge was jointly framed against all the six accused persons including the appellants under Section 411/34, 379/34, 120(B), 364(A) of the I.P.C.

4. During the trial to establish its case on behalf of the prosecution altogether seventeen witnesses were examined. Out of seventeen witnesses the victim namely- Sanjeet Prakash has been examined as P.W. 13 and Mantu Kumar (driver of the vehicle and also informant) has been examined as P.W. 10, are witnesses regarding the motive and manner of occurrence as well as on the point of identification and also establishing place of occurrence. P.W. 1 (Chintoo



Kumar), P.W. 2 (Santosh Kumar), P.W. 6 (Sujit Kumar), P.W. 7 (Guddu Kumar) and P.W. 14 -Anita Devi (sister of the victim) are witnesses to the seizure list as well as on other facts relating to commission of offence. P.W. 3 (Sri Ram Rai) and P.W. 4 (Sahdeo Pandit) are witnesses hailing from the village i.e. Bhatkeshari, District – Saran (Chapra) from where the victim after fleeing away from the captive of the accused persons had telephonically informed his family members. P.W. 5 (Anuj Kumar) is the resident of Belaganj who has stated regarding noticing white Bolero vehicle on the date of occurrence. P.W. 12 (Rangila Yadav) is a Constable and was posted in Police Picket near the Barabar Hills on the date of occurrence i.e. on 24.10.2008. P.W. 15 (Rameshwar Prasad) is the father of the victim and he in his evidence has stated that how firstly he got information from the driver of the vehicle regarding kidnapping and thereafter received telephonic information from the victim after he fled away from the captive of accused persons. P.W. 16 (Ujjwal Kumar Singh) on 20.09.2008 was posted as Block Development Officer cum Circle Officer, Makhdumpur and he conducted test



identification parade in respect of articles seized particularly mobiles etc.

5. During investigation P.W. 17 (Sri Sanjay Kumar) Judicial Magistrate 1st Class on 17.12.2008 had conducted test identification parade in which besides other two accused all the four appellants were identified by the victim i.e. P.W. 13 Sanjeet Kumar and three appellants were identified by P.W. 10 -Mantu Kumar (informant and driver of the vehicle). P.W. 8 was Sub-Inspector of Police for some time had conducted investigation and prepared seizure list. P.W. 9 -Ashok Kumar, S.H.O. cum Officer -in-charge of Makhdumpur Police Station on 25.10.2008, is the main Investigating Officer, who after investigating the case had submitted charge sheet keeping investigation pending against others. P.W. 11 (Pukar Kumar) is the only witness who did not support the prosecution case and was declared hostile by the prosecution.

6. After completion of the prosecution evidence on 15.01.2014 the appellants were questioned with incriminating circumstances and evidences brought during the trial against the appellants in which they claimed as if they were falsely



implicated however from the defence side no evidence either oral or documentary has been brought on record.

7. Sri Sanjay Kumar Singh, learned counsel appearing on behalf of the appellant in Cr. Appeal (D.B.) No. 306 of 2015 after placing entire evidence has argued that prosecution though has not established its case beyond reasonable doubt, the learned trial judge has incorrectly passed judgment of conviction and sentence. It has been argued that it is case of the prosecution that prior to the date of occurrence earlier twice the appellants hiring vehicle of P.W. 13 with him as well as his driver (P.W. 10) had visited tourist places in Bodh Gaya. On third occasion it was alleged that the owner of the vehicle was kidnapped however neither the driver of the vehicle i.e. P.W. 10 nor owner of the vehicle, who is the victim (P.W. 13) disclosed name of either of the accused persons involved in the crime. He submits that it appears to be improbable that though the driver and owner of the vehicle were in association with the accused persons, were not aware about the name of either of the accused persons. This circumstance categorically creates serious doubt on the prosecution case. Learned counsel for the appellant in support



of his submission has placed reliance on a Division Bench judgment of this court reported in **2005 (4) PLJR 460 (Md. Mobin Ali @ Moquim Ali vs. The State of Bihar)**. He submits that in a case of remaining in captivity for about seven days none disclosure of name of accused persons was considered as fatal for the prosecution case and as such in this case also, it has been argued that non disclosure of name of either of the accused persons by the driver or victim may be treated as fatal for the prosecution case. Sri Sanjay Kumar Singh, learned counsel for the appellant has further argued that if for the time being it is assumed that it was a case of kidnapping, in any event prosecution has not been able to establish its case as if kidnapping was done for the purposes of ransom and as such the learned trial judge has incorrectly convicted the appellant for the offence under Section 364(A) of the I.P.C. There are serious lapses of ingredients for application of Section 364(A) of the I.P.C. Alternatively it has been argued that hardly it can be a case under Section 365 of the I.P.C. for commission of which maximum sentence prescribed in the I.P.C. is seven years imprisonment. It has further been argued that prosecution has not brought on record



any material to show as to whether the victim was confined in a room or hut or not, and as such, he submits that there was no case of application of even Section 365 of the I.P.C. It has also been argued by learned counsel for the appellant that despite the fact that formal F.I.R. was drawn on 25.10.2008 without any plausible reason or explanation the F.I.R. in the court was received on 28/10/2008 which also creates doubt on the prosecution case. It has further been argued that during investigation or even during the trial prosecution has not brought on record any paper of the vehicle which was said to be taken away by the accused persons nor the title of the vehicle has been established.

8. Sri Bikramdeo Singh, learned counsel assisted by Sri Narendra Kumar, learned counsel for the appellants in Cr. Appeal (D.B.) No. 909 of 2014 (Munnilal Mahto & Anr. versus The State of Bihar) in furtherance of the submission made by Sri Sanjay Kumar Singh, learned counsel for the appellant in Cr. Appeal (D.B.) No. 306 of 2015 has emphasized that in any event it was not a case of kidnapping for ransom since during entire evidence nothing has been brought on record to show as to whether purpose for



kidnapping was ransom and in that situation instead of convicting the appellants under Section 365 of the I.P.C. the learned trial judge has incorrectly passed judgment of conviction under Section 364-A of the I.P.C. He submits that in the evidence basic ingredients of Section 364-A of the I.P.C. is missing since nothing has been brought on record regarding demand for ransom nor prosecution has made out a case that the victim was coerced or threatened for his death. So far the case of Munnilal Mahto (appellant no. 1 in Cr. Appeal (D.B.) No. 909 of 2014) is concerned, it has been argued that only evidence against this appellant has been brought on record by the prosecution that while the victim was kidnapped and in captive this appellant was providing meal to him and as such it can be inferred that appellant was not knowing regarding the kidnapping of the victim and as such his judgment of conviction and sentence is liable to be set aside.

9. Sri Sachidanand Chaudhary, learned counsel assisted by Sri Lovekush Kumar, learned counsel for the appellant in Cr. Appeal (D.B.) No. 44 of 2015 (Umanath Tiwari versus The State of Bihar), even though most of the



grounds has already been taken by learned counsels in other two appeals, has argued in detail as if the prosecution has falsely implicated the appellant. At the very outset he submitted that in the case there were only two material witnesses. Those were P.W. 10 -Mantu Kumar (driver of the vehicle) and P.W. 13 - Sanjeet Prakash (the victim); otherwise according to Sri Chaudhary, learned counsel for the appellant other witnesses are only formal in nature or witnesses to the seizure list. Despite the fact that in a case of such nature particularly kidnapping for ransom evidence on each point has got much relevance for testing the case, but to the reasons best known to Sri Chaudhary, he has harped only upon as if only two witnesses were material witnesses in the present case oblivious of the fact that in the case witnesses who were present near the Barabar Hills from where the victim was finally taken away to another district- Chapra, those witnesses have supported the prosecution case. Similarly two witnesses hails from a village Bhatkeshari which was the village in the district at Saran (Chapra) where the victim finally after fleeing away from the clutches of the accused persons had firstly arrived and from the said village with the help of those



witnesses had telephonically informed his parents, even those witnesses, as per Sri Chaudhary, were considered as formal witness. We are of opinion that such submissions are required to be noticed only for its rejection. Sri Chaudhary has further argued that test identification parade or T.I. chart has got only corroborative value and he has argued that unless the prosecution establishes its case there was no relevance for noticing the T.I. chart. He further submits that P.W. 10 (driver) who participated in the test identification parade though had identified three accused persons and he deposed the same during the trial, during evidence he failed to identify the accused persons who were in dock and as such, according to Sri Chaudhary, in such situation there was no relevance for test identification parade. He has also drawn our attention to paragraph 16 of the cross examination of P.W. 10 and submits that this witness in his evidence has stated that at the time of test identification parade Police was with him and under pressure of Police identification was done and as such according to him no reliance can be placed on T.I. chart. He further submits that so far appellant- Umanath Tiwari is concerned, though prosecution has established that he



accompanied the victim up to Barabar Hills there is no other evidence on record to show that he participated in subsequent action or not. According to Sri Chaudhary none bringing on record any evidence showing participation of the appellant after the episode of Barabar Hills the appellant was not required to be held guilty as if he was also one of the members of the kidnapping party. This submission is also required to be noticed for its rejection. Moreover in case of kidnapping it is not necessary for the prosecution to bring on record evidences showing that right from the very beginning one had participated till the end. If it is a case of kidnapping for ransom in such situation possibility of involvement of number of groups may not be ruled out. At least in the present case learned counsel for the appellant has admitted that there is evidence that appellant -Umanath Tiwari was one of the companions with the victim along with other accused persons from Gaya to Barabar Hills since during the trial evidence has been brought on record that while accused persons, who were four in number which includes the appellant- Umanath Tiwari, reached near Barabar Hills with driver and the victim they left the driver and vehicle and victim with four kidnappers visited



Barabar Hills and after about ten minutes one of the associates from amongst four returned back and provided *Frooti* containing sedative to P.W. 10 (driver of the vehicle). After consuming the same he felt drowsiness and became unconscious in between 12.00-1.00 and he remained unconscious up to 4.00 P.M. when only he was awoken by some other person. This circumstance is itself enough to establish that appellant -Umanath Tiwari was active member in kidnapping of the victim. Sri Chaudhary has also argued that in the evidence it has come that about one month back from the date of occurrence the appellants had hired the vehicle of P.W. 13 and visited tourist spots and thereafter on one another occasion also he had come and it was the third occasion when the victim was finally kidnapped. He submits that since the victim was in continuous touch with the appellants and their other associates, there was every possibility of knowing the name of the accused persons, but neither in the F.I.R. nor during investigation either of the two witnesses i.e. P.W. 10 or P.W. 13 had disclosed the name of any of the accused persons. He further submits that during the trial evidence has been brought on record that while the victim



was in captive of the accused persons one Manoj Singh had indicated that he will demand Rs. 10 lakhs as ransom but nothing has been brought on record that the appellant/ Umanath Tiwari had demanded any ransom or not. He further submits that the said Manoj Singh has not been charge sheeted or put on trial along with the appellants. He reiterated that the prosecution has failed to establish the purpose of kidnapping and as such there is no application of Section 364-A of the I.P.C. He has also placed reliance on a judgment of the Hon'ble Supreme Court reported in **2008(2) PLJR (SC) 12 Suman Sood @ Kamal Jeet Kaur vs. State of Rajasthan** and has referred to paragraph no. 63 and 67 of the judgment which is quoted hereinbelow:-

“63. In the present case, there is no evidence at all – direct or indirect – to connect Suman Sood with kidnapping of Rajendra Mirdha for ransom. Admittedly, she was not a member of the party in the Maruti car in which Rajendra Mirdha was kidnaped. It is not even an allegation of the prosecution that Suman Sood had at any occasion made demand for release of Bhullar or she was present when such telephone calls were made to family members of Rajendra Mirdha (Udai Rani Mirdha, wife of Rajendra Mirdha or Shri Ram Niwas Mirdha, father of Rajendra Mirdha). There is nothing to show that Suman Sood was a member of Khalistan Liberation Force (KLF). There is also no evidence to show that Suman Sood was even knowing Bhullar or was interested in his release. PW 9 Rajendra Mirdha admittedly remained in House No. B-117, Model Town where Suman Sood was present for about eight-nine days from February



17, 1995 to February 25, 1995. Rajendra Mirdha nowhere stated, in his deposition that during the entire period, Suman Sood had told him that he was kidnapped and kept there so that one of the members of Khalistan Liberation Force (KLF) should be released. We have upheld her conviction for offences punishable under Sections 365/120B, 343/120B and 346/120B IPC keeping in view the fact that Rajendra Mirdha was kidnapped by Daya Singh and was kept at a secret place (House No. B -117) and Suman Sood was staying in the house and was aware that Rajendra Mirdha was kidnapped by her husband and was kept at secret place. But there is no iota of evidence to connect Suman Sood with ransom and the alleged demand of accused Daya Singh for release of Bhullar.

67. That, however, does not mean that Suman Sood was also a part of conspiracy in kidnapping for ransom. No witness has directly or even indirectly deposed about ransom by Suman Sood. The learned advocate appearing for the respondent – State also could not point out anything from which it can be said that she had committed an offence punishable under Section 364A read with Section 120B, IPC”

Taking aid from the observation of the Apex Court he submits that it was not a case of kidnapping for ransom and conviction can be altered from Section 364-A to Section 365 of the I.P.C. He submits that since the appellant has remained in custody for much more than seven years i.e. he is in custody from 13.11.2008, even if the conviction is altered to Section 365 of the I.P.C. he can be directed to be released forthwith as he has already completed maximum period of imprisonment prescribed under Section 365 of the I.P.C.

10. Sri Mayanand Jha as well as Sri Ajay Mishra, learned Additional Public Prosecutors have opposed the



aforesaid appeals primarily on the ground that prosecution in the present case has established each and every aspect relating to application of Section 364-A of the I.P.C. He submits that the conspiracy was continuing by accused persons since long and this was the reason that thrice the victim's vehicle was hired by the accused persons and finally the victim (owner of the vehicle) was kidnapped and his vehicle was also taken away by the accused persons which was never recovered. He submits that it is case of prosecution that first of all while the appellants along with the victim and driver reached Barabar Hills, in a clandestine manner, the driver was administered sedative in the garb of providing *Frooti* and after consuming *Frooti* he became unconscious and subsequently the victim was taken away by the appellants along with the vehicle. Sri Mayanand Jha, learned A.P.P. submits that administering sedative was itself indicative of the fact that the appellants had caused hurt to the driver (P.W. 10) and similarly sedative was also administered to the victim (P.W. 13). He further submits that in the evidence the victim has categorically deposed that while he was in captive and detained in an abandoned place he was asked to provide mobile no. of his family members and



one of the kidnappers in clear term had stated that he will be demanding Rs. 10 lakhs as ransom. Sri Jha, learned learned A.P.P. submits that this act was explicit exhibition of demand for ransom and as such in the case charge was rightly framed under Section 364(A) of the I.P.C. and the learned trial judge has passed judgment of conviction under the same Section which requires no interference.

11. Besides hearing learned counsel for the parties we have minutely examined entire evidence on record. However before proceeding further it would be necessary to re-produce the evidence which has been brought on record from the mouth of the victim. The reason is that the victim would be the best person to give detail of the entire episode. The victim namely - Sanjeet Prakash (the owner of the vehicle) has been examined as P.W. 13. He was examined as witness on 6th June, 2013. He stated that the time of occurrence was in between 12.00-1.00 P.M. in day time which occurred about four years back. He deposed that his driver- Mantu Kumar telephonically informed him that there was one customer for Bodh Gaya and since his child was ill he requested the owner to go along with the tourists to Bodh



Gaya. This witness thereafter reached near Gaya Railway Station where his vehicle was parked. The driver after handing over keys of the vehicle told that four persons were staying in Satkar hotel. He went inside Satkar hotel, Gaya. Thereafter he along with those persons went to Bodh Gaya and returned back in the evening and dropped them in the same hotel. Those persons enquired from him regarding other tourist places which was replied by P.W. 13 that Ragjir and Barabar Hills are also places to visit. Before returning they said that again they would come to Gaya and after 15-20 days they came to Gaya and stayed in the same hotel i.e. Hotel Satkar and from there telephonically called P.W. 13, however on the said day his vehicle was already hired. On the request of those persons this witness provided another vehicle with the help of one travel agent of Station for visiting Ragjir. As per this witness those persons returned back after visiting Rajgir. On the next day again he asked this witness to come with his vehicle for visiting Barabar Hills. This witness explained that after picking up those four persons with the driver he firstly visited Mangla Gauri temple in Gaya and thereafter took breakfast. He asked the driver to go with those persons to



Barabar Hills, however the accused persons insisted this witness to accompany them and thereafter this witness also went with four persons including the driver to Barabar Hills. Before visiting Barabar Hills they stopped in Bela market where those persons purchased Bear, Whiskey and *Frooti* and then proceeded to Barabar Hills. After reaching Barabar Hills, he asked the driver to remain with the vehicle there and this witness went along with the four persons for their visit to Barabar Hills. The driver stayed near the vehicle. Amongst four persons one stayed and only three climbed the hill. While they returned back near the vehicle one of the accused person out of four accused persons again brought *Frooti* from the vehicle and provided one glass to this witness who consumed the same. After 2-3 minutes he lost his sense. In paragraph 14 of his evidence he stated that in the night when he awoke he noticed that his vehicle was moving and the vehicle was being driven by another person. He enquired for his driver, however no satisfactory reply was given and again he became unconscious. In the morning at about 4.00 he found himself lying beneath a tree. Out of four accused persons only one was present there and two new persons had arrived. This



witness enquired from them regarding his vehicle. Subsequently the accused persons forcibly taken his shoes, Titan watch, two golden rings, golden chain, mobile and purse containing 1400-1500 rupees. This witness further wanted to know something. Thereafter one of the accused person slapped and told that he had already been kidnapped. The accused persons forcibly took out his shirt and jeans pant and he was provided one *gamcha* and he was kept there. After some time one accused with the name Manoj Singh arrived there. This witness in paragraph 19 of his evidence has stated that one more person since for three days was providing meal to him, his name was some Mahto however he was not recollecting his name but in dock he identified the said old person who on being asked said that he was Munnilal Mahto. This accused was identified by P.W. 13 in court. In paragraph 29 of his examination in chief he further claimed to identify Sanjay Pandey (appellant in Cr. Appeal (D.B.) No. 306 of 2015) and Umanath Tiwari [appellant in Cr. Appeal (D.B.) No. 44 of 2015] who were present in court and said that both of them were associates of four and out of four two were present and he was not recollecting the name of other two



accused persons but claimed to identify on being produced. In paragraph 22 of his examination in chief he deposed that on second day Manoj Singh enquired mobile no. of his house however he did not provide the same. The said accused described that he would be demanding ransom amount of Rs. 10 lakhs. On the third day in day time this witness stated that he thought that even after getting money there is possibility that he may be killed by the accused persons and started to plan for fleeing away in the night. In the night at 7-8 P.M. the accused persons brought meal and also liquor. This witness consumed meal but refused to take liquor. In the night after getting opportunity that two kidnappers who were keeping watch on this witness were sleeping anyhow he started fleeing away. He moved for about 1-2 hours. Thereafter he could notice light and he proceeded there where he found one person who informed him that after the village there is market, however since it was late night market was closed. He enquired from one person and explained about all the incident. This witness from one of the residents wanted mobile phone but it was not available. He was informed that S.T.D. booth will open in morning. This witness was provided



clothes i.e. lungi and undergarment which he changed. It was about 2.30-3.00 in the night. In the morning he went to S.T.D. booth, from where he firstly dialled on the no. of his sister which was switched off. Then on the number of his father he had a talk and when he was asked by his father from where he was making telephone call whereupon this witness handed over the telephone to the booth owner and booth owner informed that it was district- Chapra, village: Bhatkeshari. Two witnesses who met with this victim in the village are P.W. 2 (Santosh Kumar) and P.W. 3 (Sri Ram Rai). His sister requested the STD booth owner to keep his brother. This witness further stated that in the meanwhile accused- Manoj Singh and another came there however due to intervention of the villagers they could not succeed and within ½ hours Police arrived there and entire fact was disclosed to Bara Babu. This witness also provided location where he was kept in captive. He along with Police party visited there and one old person i.e. Munnilal Mahto who was providing meal to this witness was apprehended by the Police. After 1-2 hours his brother with his sister also arrived there. His statement was recorded by the Police and he further deposed that his mobile which



was taken by the accused persons was identified by him. He further stated that in the jail he participated in test identification parade and identified the accused persons which includes the appellants. This witness, though was cross examined at length but nothing could be extracted to create any doubt on his evidence. In paragraph 57 of his cross examination he stated that Makhdumpur Police had brought him for test identification parade but Police remained outside the jail and T.I.P. was held inside the jail and it was conducted in presence of Magistrate. Though he was drawn attention to some of his previous statement recorded by the Police during investigation at the time of examination of the Investigating Officer no such corroboration was taken and as such there is no requirement to take notice of such facts. On examination of entire evidence of P.W. 13 there is no reason to raise any doubt in respect of complicity of the appellants.

12. P.W. 10 (Mantu Kumar) is the informant of the case. He was driver of the victim. During his evidence he identified his signature on the written report, which has been marked as Ext. 7 and also his signature on seizure list relating to mobile which was marked as Ext. 7/1. This witness also



identified his signature on the T.I. chart which was marked as Ext. 7/2. He described as to how on 24.10.2008 he being driver of the vehicle along with the owner- Sanjeet Prakash (P.W. 13) had gone by the vehicle i.e. white Bolero bearing registration no. BR-43A-1772. He while reiterating the fact mentiond in the F.I.R., also stated like P.W. 13 (owner of the vehicle). He deposed that after they along with other reached Barabar hills the accused persons with the owner went and he stayed with the vehicle. In paragraph 9 of his examination in chief he deposed that out of four accused persons one returned back and thereafter he provided *Frooti* which was consumed by this witness. He stated that he slept near the vehicle and at 4.30 P.M. he awoke however he did not notice either the vehicle or his owner. In state of intoxication he started searching them and finally in the said condition he returned back to his house. From Khinzersarai he telephonically informed regarding the occurrence. The father of the owner of the vehicle with other relatives came to the house of this witness and enquired about the entire occurrence. Thereafter in Bela Police Station written information was given. He disclosed that his mobile was kept in the vehicle which fact



has been described in the written report. In paragraph 12 of his evidence he stated that in the test identification parade on 17/12/2008 he had identified accused persons. Amongst them he could identify only three accused persons however he was not in a position to disclose the name of either of them. He clarified that since much time had elapsed he was not in a position to identify the accused persons who were present in court. In cross examination in paragraph 16 he stated that at the time of identification Police was there and under the pressure of Police he identified. Of course to the extent of identification his evidence to some extent may goes against the prosecution case but first part of the evidence that he was along with his owner and other four accused persons up to Barabar Hills from where he returned back cannot be ignored.

13. P.W. 1 (Chintoo Kumar) is the resident of Makhdumpur and he identified his signature on the seizure list which was marked as Ext. 1 and P.W. 2 (Santosh Kumar) is also resident of Makhdumpur. He has identified his signature on the seizure list which was marked as Ext. 1/A.

14. P.W. 3 (Sri Ram Rai) is the resident of village Bhatkeshari, district- Chapra. He was the owner of the S.T.D.



from where the victim (P.W. 13) had telephoned his family members. This witness in his evidence has corroborated the fact that on the date of occurrence P.W. 13 in the morning at 5-6 had telephoned to his family members. Meaning thereby that this witness, resident of village- Bhatkeshari has corroborated the evidence of P.W. 13 regarding the fact that while he fled away from the captive of accused persons firstly he visited the same village which was in different district i.e. Chapra. This witness was also cross examined but nothing could be extracted to create doubt on the prosecution case.

15. P.W. 4 (Sahdeo Pandit) is another witness who is resident of Bhatkeshari village, Saran (Chapra). He stated that in the year 2008 at about 3-4 in the morning one boy reached near him runningly and he contacted him. He further stated that the said boy had enquired about the telephone booth which was shown by this witness. Of- course there after he did not say anything regarding the occurrence but this evidence is sufficient to come to conclusion that after kidnapping the victim after fleeing away had firstly reached this village from where he telephonically informed his parents and family members and Police arrived there.



16. P.W. 5 (Anuj Kumar) is the witness who was working in Tea and break fast shop near Barabar Hills and he said that on the date of occurrence he had seen white colour Bolero vehicle and subsequently he heard that kidnapping had taken place. He clarified that he had seen 3-4 persons occupying the vehicle however he had not identified anyone.

17. P.W. 6 (Sujit Kumar) and P.W. 7 (Guddu Kumar) are witnesses to the seizure list relating to mobile.

18. P.W. 14 (Anita Devi) is the sister of the victim (P.W. 13) and also witness to the seizure list relating to seizure of plastic tumbler, cigarette packets etc. found near Barabar hills regarding which it has come that victim and the driver were administered sedative. She has also corroborated the stand of the victim as to how after being freed from Bhatkeshari village from S.T.D. booth he telephoned and there was talk with the S.T.D. booth owner who disclosed the name of the village. She also went along with others.

19. P.W. 17 (Sri Sanjay Kumar, Judicial Magistrate 1st Class) had conducted test identification parade on 17.12.2008 inside the jail in which six accused persons were got identified by two witnesses i.e. P.W. 10 and P.W. 13. In



T.I.P. P.W. 10 identified three accused persons namely: Sanjay Pandey, Umanath Tiwari and Binod Tiwari whereas, P.W. 13 (Sanjeet Prakash) had identified all the six accused persons which includes the four appellants before this court. T.I.P. chart was identified by this witness and it was marked as Ext. 8

20. P.W. 15 (Rameshwar Prasad) is the father of victim (P.W. 13). He in his evidence deposed that 5-6 months prior to the occurrence his son had purchased the vehicle. He further deposed that on the date of occurrence at 11.00 he had asked about the where about of his son. Then his son (victim) said that he was going to Barabar Hills. Again at 2.30 P.M. he telephoned but it could not be connected. In the evening he went near Satkar hotel and enquired from Manager and agent but he could not get information regarding return of his son. The agent stated that Mantu (driver -P.W. 10) from Khinzesarai had telephoned that he had returned to his house on foot. This witness went to the house of Mantu (driver). Within ten minutes the driver came there and told that he and Sanjeet (P.W. 13) were provided *Frooti* and thereafter he became unconscious and he was not knowing about where



about of Sanjeet Prakash. This witness thereafter went to Makhdumpur Police Station where Mantu (P.W. 10) gave written information whereupon the case was lodged. From there they went to Barabar Hills. Near the gate of Barabar Hills there were *Force* and they identified Mantu. In his presence glass etc. were seized from the place where vehicle was parked. He stated that his son was kidnapped for ransom. After 3-4 days his son fled away from the clutches of accused persons and thereafter narrated about the occurrence. He further stated that the vehicle has not been traced. In cross examination he stated that he had not produced documents of the vehicle to Police and denied the suggestion regarding institution of false case.

21. P.W. 16 (Sri Ujjwal Kumar Singh) on 20.09.2009 was posted as Block Development Officer -cum- Circle Officer, Makhdumpur and he conducted test identification parade in respect of seized articles in connection with Makhdumpur P.S. Case No. 264 of 2008 dated 25.10.2008 and he identified the test identification chart, which was marked as Ext. 7/ 3.



22. P.W. 12 (Rangeela Yadav) on 24.10.2008 was posted in Police picket, Barabar Hills. He deposed that on the same day at 2-2.30 P.M. he had seen white Bolero car. In the evening at 4-4.30 P.M. the driver in intoxicant state had come who disclosed his name as Mantu. The driver described that he consumed *Frooti* which was provided by accused persons and same was mixed with intoxicant and they fled away with the vehicle and owner of the vehicle and due to intoxication he was lying there. This witness further stated that he provided water and after consuming the same the driver vomited and subsequently he went to his village. In cross examination he stated that he could not see occupants in the vehicle since it was far away.

23. P.W. 8 (Dinsh Kumar Mahto) was Sub Inspector of Police who for some time had investigated the case. He had proved seizure list in respect of recovery of mobile phone from one of the accused- Vinod Tiwary, which was marked as Ext. 2 and seizure list in relation to recovered mobile from possession of Umanath Tiwari (sole appellant in Cr. Appeal (D.B.) No. 44 of 2015) and Ajay Singh (appellant no. 2 in Cr.



Appeal (D.B.) No. 909 of 2014) which was marked as Ext. 2/1.

24. P.W. 9 (Ashok Kumar) is the Investigating Officer. On 25.10.2008 he was Officer- in- charge of Makhdumpur Police Station. In his evidence he identified endorsement on the written information, marked as Ext. 3, forwarding on the written report, marked as Ext. 3/1, formal F.I.R. (Ext. 4), seizure list of tumbler, bottle cork etc. which were seized from nearby Barabar Hills where the vehicle was firstly parked and it was marked as Ext. 5. He also identified confessional statement of Munnilal Mahto, Lalo Sahani and Umanath Tiwari which were marked as Ext. 6, 6/1 and 6/2 respectively and he also proved his signature on the seizure list relating to recovery of mobile phone from Sanjay Pandey, which was marked as Ext. 5/1. He also proved memo of arrest, which was marked as Ext. A. In his evidence P.W. 9 stated that on 25.10.2008 at 4.00 in the morning he received written information of Mantu Kumar [driver -P.W. 10] vide memo no. 1404 dated 24.10.2008 which was endorsed by him and thereafter formal F.I.R. vide Makhdumpur P.S. Case No. 264 of 2008 was registered and he started investigation. After



taking over investigation he recorded re-statement of the informant and on 25.10.2008 at 4.30 P.M. with informant and his family members he proceeded for the place of occurrence and at 5.30 P.M. he reached there and inspected the place of occurrence which was a tourist place in Barabar Hills at the Eastern side of Khinzersarai. The place of occurrence was about 50 yards away from the road that was near a tree. There he found cork of liquor bottle, five tumblers which were seized and seizure list was prepared , which was marked as Ext. 5. From the place of occurrence about 200 yards on the Western side there was a Police picket. He recorded statement of Anita Devi (P.W. 14), Rameshwar Prasad (P.W. 15), Anuj Kumar (P.W. 5), Ramnandan Yadav (not examined), S.A.F. Hawaldar Rangeela Yadav (P.W. 12) and Pukar Kumar (P.W. 11). In paragraph 9 of his evidence he stated that on giving call through electronic surveillance on theft mobile then it transpired that it was from Siwan of one person namely: Santosh Singh. This witness further disclosed that he got information that victim -Sanjeet Prakash (P.W. 13) had already been recovered by Jalalpur (Chapra) Police Station, then he recorded statement of the victim (P.W. 13) after visiting there



and thereafter he visited the place where the victim was secretly confined. It was village- Nathanpur, Police Station -Jalalpur, District- Chapra. It was a lonely *Chawar* of Rusi Gambhariya where there were jungle and *Jhar* where Munnilal Mahto (appellant no. 1 in Cr. Appeal (D.B.) No. 909 of 2014) had erected a hut. In the said hut the victim was kept in captivity from where the victim succeeded in fleeing away. On the Northern side of the area there was a village namely Bhatkeshari. On the Southern side was the village- Nathanpura. Village -Bhatkeshari is the same village where for the first time the victim after fleeing away and moving for 1-2 hours had arrived and from which village using STD booth had informed his family members. This witness further stated that he recorded statement of Sahdeo Pandit (P.W. 4) and Sri Ram Rai (P.W. 3) resident of village: Bhatkeshari. He arrested Munnilal Mahto. During investigation he arrested Sanjay Pandey (appellant in Cr. Appeal (D.B.) No. 306 of 2015), Niranjan Kumar, Mahesh Sahani and Lalo Sahani and in course of search he recovered mobile phone from Sanjay Pandey and prepared seizure list. Further he deposed that during investigation he recorded confessional statement of



Lalo Sahani and Umanath Tiwari @ Baba, whereafter after obtaining order from the court conducted test identification parade. In paragraph 17 of his examination in chief, this witness deposed that in the test identification parade, the victim (P.W. 13) identified Munnilal Mahto (appellant no. 1 in Cr. Appeal (D.B.) No. 909 of 2014), Sanjay Pandey (appellant in Cr. Appeal (D.B.) No. 306 of 2015), Umanath Tiwari (sole appellant in Cr. Appeal (D.B.) No. 44 of 2015) and Ajay Singh (appellant no. 2 in Cr. Appeal (D.B.) No. 909 of 2014) whereas the driver -Mantu Kumar (P.W. 10) in test identification parade identified Sanjay Pandey, Umanath Tiwari and Vinod Tiwari @ Danka Baba. He further stated that seized mobiles were put on T.I. parade with the order of the court and it was conducted by Block Development Officer (P.W. 16). This witness was also cross examined at length but nothing could be extracted to raise any doubt on his evidence.

25. On perusal of entire evidence as discussed hereinabove it is evident that prosecution has established its case beyond all reasonable doubts. However, at the time of argument Sri Sachchidanand Chaudhay, learned counsel for the appellant in Cr. Appeal (D.B.) No. 44 of 2015 Umanath



Tiwari versus The State of Bihar, had repeatedly emphasized that this appellant was identified as companion of other accused and his role was only up to Barabar Hills from Gaya so he may not be shown as involved in the case of kidnapping for ransom. He has reiterated that after Barabar Hills nothing has been indicated as to whether this appellant remained with the victim or he demanded any ransom. He submits that in absence of establishing a case of demanding ransom there was no case of application of Section 364-A of the I.P.C. Similarly Sri Bikramdeo Singh, learned counsel appearing in Cr. Appeal (D.B.) No. 909 of 2014 so far appellant no. 1 – Munnilal Mahto is concerned, has emphasized that his role in the case was shown only to the extent of providing food / meal to the victim (P.W. 13) while he was under captivity and since prosecution has not brought any evidence that he was involved in the demand for ransom he too was not required to be held guilty under Section 364-A of the I.P.C.

26. The court is of opinion that before dealing with the submission of learned counsel for the appellants it would be necessary to notice that appellants were convicted under Section 364-A read with Section 120-B of the I.P.C. It is



settled that in case of conspiracy act of one accused becomes the act of others. In a case of conspiracy it is not necessary that prosecution must bring on record the evidence showing that all the accused persons were aware with all the events relating to commission of offence. At this juncture it would be necessary to refer Section 10 of the Indian Evidence Act, 1872 [hereinafter referred to as the “Evidence Act”] which is quoted as follows:-

“10. Things said or done by conspirator in reference to common design.- Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.”

At the same time before dealing with Section 120-B of the I.P.C., it is necessary to note down the definition of Criminal Conspiracy i.e. Section 120A of the I.P.C., which is quoted as follows:-

“120A. Definition of criminal conspiracy. -
When two or more persons agree to do, or cause to be done, -
(1) an illegal act, or
(2) an act which is not illegal by illegal means,
such an agreement is designated a criminal conspiracy:



Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.”

27. On examination of aforesaid provisions it is clear that where there is a reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring as well for the purpose of proving the existence of the conspiracy for the purpose of showing that any such person was a party to it.

28. The aforesaid Section can be divided into two parts. Firstly where there is reasonable ground to believe that two or more persons have conspired to commit an offence or an actionable wrong, and it is only when this condition precedent is satisfied then subsequent part of the Section comes into operation. It is to be noted that this part talks about reasonable grounds to believe that two or more persons have conspired together and if Section 120-A & 120-B of the I.P.C.



is read *vis a vis* Section 10 of the Evidence Act it is clear that though in ordinary course act or action of one of the accused may not be used as evidence against other but an exception has been carved out in Section 10 of the Evidence Act in cases of conspiracy.

29. In the present context it is evident that prior to finally abducting the victim on the date of occurrence i.e. 24.10.2008 four accused persons conspiring with each other firstly administered sedative to the driver (P.W. 10) and thereafter with the aid of the same sedative which was mixed in *Frooti* the owner of the vehicle / victim (P.W. 13) was made to become unconscious and he was carried from Barabar Hills, Makhdumpur which was in the district of Jehanabad, the victim was carried to the district of Saran (Chapra) and in a lonely place i.e. *Chawar* surrounded by water he was kept in captivity. Evidence has come that his all belongings were taken by the accused persons. His clothes were also taken and he was provided only *Gamcha*. The victim was asked by one of the accused to provide phone no. and the victim was given to understand that accused persons were asking telephone no. for demanding ransom for Rs. 10 lakhs for releasing the



victim from illegal captivity. It is also the case of the prosecution that at the time of fleeing away in the night he was surrounded by one of the other accused persons who had not participated from Gaya while firstly from Gaya they had moved to Barabar Hills in Jehanabad and then brought to Chapra. Accordingly it was evident that in the case two or more than two persons had conspired for kidnapping the victim. So 1st part of commission of offence was established and as such any act done by any of the accused person was enough to be considered as exception under Section 10 of the Evidence Act for using act of one accused person in respect of other accused person. The case of conspiracy was also discussed by the Hon'ble Supreme Court in Suman Sood Case (Supra) on which learned counsel for the appellants has placed heavy reliance. We may not do better than to quote only paragraph 51 of the judgment wherein the Hon'ble Supreme Court has reiterated the observation in Kehar Singh case, which is quoted as follows:-

“51. In Kehar Singh vs. State (Delhi Administration), (1988)3 SCC 609: AIR 1988 SC 1883, Shetty, J. Said;

“Generally, a conspiracy is hatched in secrecy and it may be difficult to adduce direct evidence of the same. The prosecution will often rely on evidence of acts of various parties to infer that they



were done in reference to their common intention. The prosecution will also more often rely upon circumstantial evidence. The conspiracy can be undoubtedly proved by such evidence direct or circumstantial. But the Court must enquire whether the two persons are independently pursuing the same and or they have come together to the pursuit of the unlawful object. The former does not render them conspirators, but the latter is. It is, however, essential that the offence of conspiracy requires some kind of physical manifestation of agreement. The express agreement, however, need not be proved. Nor actual meeting of two persons is necessary. Nor it is necessary to prove the actual words of communication. The evidence as to transmission of thoughts sharing the unlawful design may be sufficient.”

So far kidnapping for ransom is concerned it would be necessary to quote Section 364A of the I.P.C., which is as follows:-

“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 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.”

The Hon’ble Supreme Court in Suman Sood case (Supra) in paragraph no. 57 has observed 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.

30. Meaning thereby that for holding guilty under Section 364A of the I.P.C. aforesaid three conditions are necessary to be filled up. The evidence which have been discussed hereinabove categorically establishes that the appellants had kidnapped P.W. 13, detained him and made explicit exhibition of demand of ransom while the victim was in captivity. One of the accused had clarified regarding demand of ransom for Rs. 10 lakhs. Even before that the victim was administered sedative that also can be considered as causing hurt to the victim which can reasonably be inferred. So far argument of learned counsel for the appellants that in view of the judgment in Suman Sood Case (Supra) the appellants may not be held guilty under Section 364-A of I.P.C., on examination of the aforesaid judgment of the Hon'ble Apex Court it is evident that Suman Sood and her husband were prosecuted for the offence under Section 364A read with Section 120B of the I.P.C. on an allegation of abducting one Rajendra Mirdha who was son of Sri Ram Niwas Mirdha who was heading Joint Parliamentary Committee as Chairman. His son was kidnapped by the



accused persons and kidnapped person was kept in captivity in the house of Daya Singh Lahoriya @ Rajeev Sudan @ Vinay Kumar, husband of Suman Sood @ Kamal Jeet Kaur @ Kanwaljit Kaur. The said kidnapping was made for the purposes of release of one Devendra Pal Singh Bhullar one of the member of Khalistan Liberation Force. During the trial though Daya Singh, husband of Suman Sood @ Kamal Jeet Kaur @ Kanwaljit Kaur was convicted under Section 364A of the I.P.C. and other Sections of the I.P.C., Suman Sood @ Kamal Jeet Kaur @ Kanwaljit Kaur was not convicted by the trial judge under Section 364A of the I.P.C. rather she was convicted under Section 365 of the I.P.C. The two convicts had preferred appeal before the High Court and State had preferred appeal against acquittal of Suman Sood from charge under Section 364A of the I.P.C. On appeal the High Court of Punjab while dismissing the appeals preferred by Daya Singh and Suman Sood allowed the Government Appeal and altered the conviction of Suman Sood from Section 365 of the I.P.C. to Section 364-A of the I.P.C. The Hon'ble Apex Court in Suman Sood Case (Supra) though approved the conviction of Daya Singh under Section 364- A of the I.P.C. and affirmed



the judgment of the trial court in respect of Suman Sood under Section 365 of the I.P.C., interfered with her conviction under Section 364A of the I.P.C. Besides considering other facts, considering the fact that she was wife of Daya Singh and the house in which the kidnapped Rajendra Mirdha was detained was in the name of her husband Daya Singh, whereas in the present case it was hut of Munnial Mahto which he had erected in which P.W. 13 was detained and this appellant was also providing food during his captive period. Accordingly the case of Suman Sood may not be applicable in the facts and circumstances of the present case. Moreover in the case there is evidence of demand for ransom and the victim has already indicated that he was having apprehension that he might be killed and this was the reason that after about three days of his captivity in the night anyhow he fled away and while coming to an appropriate destination i.e. village-Bhatkeshari from where he telephonically informed, it consumed 1-2 hours. In the evidence he has stated the area where he was confined was a jungle and while moving he had moved in water also for a long time. This fact is itself sufficient to draw an inference that the victim was having



appropriate apprehension under the provisions of Section 364-A of the I.P.C. So far reliance placed by learned counsel for the appellant in Cr. Appeal (D.B.) No. 306 of 2015 on **2005(4)PLJR 460 (Md. Mobin Ali @ Moquim Ali vs. The State of Bihar)** is concerned, on examining the fact of the said case the court is of opinion that appellants may not get any benefit from the said case since the fact of the present case is entirely on different footing. In the present case appellants were identified in test identification parade by the victim (P.W. 13) and also P.W. 10 (driver) of course in the dock P.W. 10 refrained from identifying but it was stated that due to lapse of time it was difficult to identify. So far P.W. 13 is concerned this witness had identified the appellants even in dock besides identifying them in the test identification parade.

31. On examination of entire evidence on record we are of considered opinion that the learned trial judge has committed no error in passing the impugned judgment of conviction and sentence. Accordingly judgment of conviction dated 21.10.2014 and sentence dated 01.11.2014 passed by Sri Raghawendra Kumar Singh, learned Additional Sessions Judge 1st, Jehanabad in Sessions Trial No. 457 of 2010 / 63 of



2010 (arising out of Makhdumpur P.S. Case No. 264 of 2008,
G.R. Case No. 2184 of 2008) is hereby approved and all the
three appeals are dismissed.

(Rakesh Kumar, J)

(Anil Kumar Sinha, J)

praful/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	25 -04-2019
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