

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHITTA RANJAN DASH
AND
HON'BLE JUSTICE PARTHA SARATHI SEN

CRA 290 of 2005

With

IA No: CRAN 2 of 2006 (Old No. CRAN 1978 of 2006)

With

IA No: CRAN 3 of 2010 (Old No. CRAN 159 of 2010)

With

CRA 364 of 2007

With

IA No: CRAN 2 of 2014 (Old No. CRAN 3587 of 2014)

With

CRA 744 of 2005

With

IA No: CRAN 5 of 2012 (Old No. CRAN 2215 of 2012)

Tapashi Ghosh

And

Bidyut Mallick

And

Bharti Gayen

Versus.

The State of West Bengal

For the Appellant : Mr. Partha Sarathi Bhattacharyya, Adv.

For the State : Mr. S.G Mukherji, Ld. PP.

Mr. Mr. Prasun Kumar Datta , Adv.

Ms. Z. N. Khan, Adv.

Mr. Md. Kutubuddin , Adv.

Last Heard on : 09.01.2023

Judgment on : 28 .02.2023

PARTHA SARATHI SEN, J. : –

1. The instant three appeals arise out of a common judgement dated 24.02.2005 and order of sentence dated 25.02.2005 as passed by the learned Additional Sessions Judge, 5th Court, Barasat, North-24-Parganas, in Sessions Trial No. 2(2)2003 arising out of Sessions Case No.30(9)2002 whereby and whereunder the said trial court found the present three appellants and one Biswanath Dey guilty under Sections 363/364A/120B of the Indian Penal Code and thus sentenced all the aforementioned convicts to suffer R.I for 7 years each and to pay a fine a of Rs.2000/- each i.d to suffer S.I for 2 months more each for the offence committed by them under Section 363 IPC. By the self same judgement the said trial court also sentenced the said four convicts to suffer imprisonment for life each and to pay a fine of

Rs.5000/- each i.d to suffer S.I for five months each for committing the offence by them under Section 364A and the said four convicts were further sentenced to suffer R.I for 6 months each and to pay a fine of Rs.200/- each i.d to suffer SI for two days each for the offence committed by them under Section 120B of the Indian Penal Code.

2. Out of the aforesaid four convicts, three convicts except Biswanath Dey preferred the instant three appeals challenging the self same judgement and the order of sentence dated 24.02.2005 and 25.02.2005 respectively as passed by the learned trial court as referred to above.

3. Since all the three appeals have arisen out of the self same judgement and since in these three appeals identical questions of facts and laws are involved we propose to dispose of the instant three appeals by a common judgement.

4. For effective adjudication of the instant three appeals, the facts leading to initiation of the aforesaid Sessions Trial are required to be dealt with in a nutshell.

5. One Subhasish Das lodged a written complaint dated 14.04.2002 with the O/C of Nimta Police Station stating, inter alia, that he along with some of his neighbours and accused persons namely Bidyut Mallick, Bharti Gayen, Tapashi Ghosh and Biswanath Dey along with his son Sandipan Das arrived at the said Police Station and stated that on the self same day i.e. on 14.04.2002 in the afternoon his son Sandipan Das, was playing with his friends by the side of his home. It has further been contended by the de facto complainant that at about 5:15 pm on the said day his son's friend, one Dhrubo informed him that his said son Sandipan Das was forcefully

kidnapped by two men and two women and thereafter fled away by riding a car having registration no. WB26A/0951. It has further been alleged that immediately after getting such information the matter was reported to his in-laws' house at Barasat and at their factory at Duttapukur as well as to his relatives and friends. From the said written complaint it also reveals that the de facto complainant stated further that in course of search of his son, at about 6:10 pm one of his employees, viz.; one Biraj Chowdhury (PW7) informed him that the said vehicle was detained at Duttapukur, wherefrom his kidnapped son was recovered and the accused persons were kept detained. It has also been stated in the said written complaint that thereafter the de facto complainant and his neighbours rushed to his Duttapukur factory where he noticed that amongst the accused persons, his ex-employee Bidyut Mallick was there and on being asked, the accused persons disclosed their names and they also stated that one Dipankar Saha was also with them who fled away in the mean time and on being further asked, the accused persons disclosed to them that they had hatched up a plan to kidnap Sandipan and to keep him detained in the house of accused Bharti Gayen for claiming ransom of Rs. 10/15 lakhs.

6. On the basis of such written complaint, Nimta P.S Case No. 28 dated 14.04.2002 under Sections 363/364A/120B IPC was started. Investigation was taken up and on completion of the same charge sheet under Sections 363/364A/120B IPC was submitted.

7. After commitment and transfer the learned trial court on 11.02.2003 took up the said case for consideration of the charges as against the aforesaid four accused persons and on perusal of the entire materials as

placed before him learned trial court framed charges under Sections 363/364A/120B IPC against all the four accused persons. Since all the four accused persons pleaded their innocence and claimed to be tried, the said trial proceeded.

8. On perusal of the trial court record it reveals to us that for bringing home the charges as framed against the four accused persons, the prosecution has examined 17 witnesses in all and in total seven documents have been exhibited on their behalf. Though before the learned trial court the accused persons adduced no evidence but from the trend of cross-examination as made by the learned defence counsel and from the answers as given by the said four accused persons in course of their examinations under Section 313 Cr.P.C it appears to us that the defence case is based on false implication and clear denial.

9. Trial court record reveals further that after considering the evidence of the prosecution witnesses, both oral and documentary and after hearing the learned advocates for the prosecution and the defence, learned trial court passed the impugned judgement, thereby convicted the said four accused persons in the manner indicated hereinabove.

10. For better appreciation of the evidence as adduced by the prosecution witnesses, a brief discussion regarding the identity of the prosecution witnesses is required to be disclosed.

11. From the trial court record it reveals that the PW1 is the de facto complainant and the father of the victim boy, PW2 is the brother of the PW1 i.e. uncle of the victim, PW3 is the victim boy himself, while PW4, PW5 and PW6 are the friends of the victim boy. PW7 is the employee of the

Duttapukur factory of PW1's family, PW8 and PW9 are the companions of PW1. PW16 is the neighbour of PW1. PW10 is the Judicial Magistrate who recorded the statement of accused Biswanath under Section 164 Cr.P.C while PW13 is another Judicial Magistrate who recorded the statement of victim boy under Section 164 Cr.P.C. PW14 is the owner of the car by which the victim was alleged to have been kidnapped by the four convict persons. PW11 is a police official of Duttapukur outpost, PW8 is the recording officer, PW7 is the first I.O and PW15 is the second I.O.

12. Since learned trial court framed charge under Section 363 IPC as against the aforesaid four convict persons and also convicted the said four accused persons including the present appellants under Section 363 IPC we consider it necessary to look to the relevant provisions of IPC which deals with the subject of kidnapping. In our considered view Sections 360 and 361 IPC are required to be looked into and those are reproduced under in verbatim:-

"Section 360 of The Indian Penal Code

360. Kidnapping from India.—Whoever conveys any person beyond the limits of 1[India] without the consent of that person, or of some person legally authorised to consent on behalf of that person, is said to kidnap that person from 1[India].

Section 361 of the Indian Penal Code

Whoever takes or entices any minor under ¹[sixteen] years of age if a male, or under ²[eighteen] years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship.

Explanation.--The words "lawful guardian" in this section include any person lawfully entrusted with the care or custody of such

minor or other person.

Exception.--This section does not extend to the act of any person who in good faith believes himself to be the father of an illegitimate child, or who in good faith believes himself to be entitled to the lawful custody of such child, unless such act is committed for an immoral or unlawful purpose."

13. Keeping in mind the aforesaid legislative enactments we shall now make an endeavour to ascertain as to whether the trial court is at all justified in convicting the present three appellants under Section 363 Cr.P.C or not.

14. At this juncture, if we look to the evidence of PW3 i.e. the victim boy himself it appears to us that in course of his examination-in-chief PW3 stated that on 14.04.2002 in the afternoon when he was standing along with his three friends namely; PW4, PW5 and PW6 and were making a preparation for playing hide and seek game, at that time one of the present appellants viz; Bidyut Mullick came down from a car and asked him to take a 'logence' and when he refused both Bidyut and one of his companions over powered him and took him inside the car by force. It was his further version that at that time he noticed that all together there were five persons in the car out of which 2 were women, one is Bidyut and another person who was identified by the said victim in course of his deposition. It was his further version that he was then crying and requested all the accused persons to leave him since he was suffering from suffocation but the accused persons did not pay any heed to his request and on the contrary they kept him under thrust and after crossing Jessore Road, they withdrew such thrust and pressure and at that time the accused Bharti asked him not to cry as she would purchase sweets for him. So far as this part of deposition of PW3

is concerned it appears to us that in course of his cross examination he could not be shaken in any way by the defence counsels. As discussed above in course of the investigation the statement of the victim was recorded by a Judicial Magistrate i.e. PW13 under Section 164 Cr.P.C and such statement was duly proved and exhibited wherefrom it reveals that on the very next day of the alleged incident, the victim boy had categorically stated before the Judicial Magistrate that on the relevant day and hour the present three appellants, convict Bidyut and another unknown person forcefully kidnapped him and fled away in a white ambassador. At this juncture if we look to the evidence of PW4, PW5 and PW6, it appears to us in course of their respective examination-in-chief the said three witnesses categorically stated as to how, on the relevant day and hour PW3, the victim boy was kidnapped in front of his house by the present appellants in their presence. It also reveals to us that in course of their respective cross-examination nothing could be elicited from the mouths of PW4, PW5 and PW6 to come to a conclusion that the evidence of PW4, PW5 and PW6 are not trustworthy either because of their tender age or because of inconsistency.

15. In view of such we have no hesitation to hold that the learned trial court is very much justified in convicting the present three appellants under Section 363 IPC.

16. As discussed above PW1, the de facto complainant who in his examination-in-chief practically stated the same version as stated by him in his written complaint (Exhibit 1). Since in his written complaint and in his examination-in-chief PW1 categorically disclosed that after the alleged kidnapping of his son, he reported the entire incident to all his near relatives

as well as to the employees of his factory at Duttapukur, we consider it necessary to discuss the testimony of PW7 Biraj Chowdhury who according to the de facto complainant is an employee of Duttapukur Factory which belongs to PW1's brother.

17. On perusal of the examination-in-chief of PW7 Biraj Chowdhury it reveals to us that on the relevant day at about 5:15 pm he got information from PW1 over phone that his son i.e. PW3 was kidnapped by five miscreants and as per the direction of PW1 he as well as other staff of Duttapukur factory started keeping watch on all white cars which were plying on Jessore Road then. He further testified that they stopped two ambassador cars and found nothing. However when they stopped the third white ambassador, he found the victim boy was sitting in between two women on the rear seat and apart from the driver another person was sitting on the front seat. He also testified that after opening the doors of the car he took out the victim boy from the said car and thereafter the victim boy and all the miscreants including the car which was used for the commission of offence were taken to the factory premises and thereafter he intimated the incident to PW1. He further stated that after arrival of PW1 within half an hour PW1 asked the said persons for what reason they had kidnapped his son to which the accused persons disclosed that they had committed such crime for ransom of Rs.14/15 lakhs. On perusal of the evidence of the other prosecution witnesses namely; PW2, PW8 and PW9 it appears to us that after recovery of the victim boy (PW3), they all accompanied PW1 to Duttapukur factory and the said three prosecution witnesses also testified that on being asked the miscreants disclosed that they had committed the

crime of kidnapping for money. On perusal of the cross-examination of PW7 vis-à-vis PW1, PW2, PW8 and PW9 it reveals to us that nothing could also be elicited from them in course of their respective cross-examination to substantiate that no such disclosure was made by the said miscreants with regard to their intention for demand of ransom to the extent of Rs.14-15 lakhs. At this juncture the evidence of the victim boy is once again required to be looked into.

18. In course of his examination-in-chief the victim boy i.e. PW3 testified thus:-

“ I repeatedly stated to them that I was having suffocation and to release me. So long they kept me under thrust. But after crossing the Jessore Road they withdrew the thrust and pressure near the temple. Then the woman accd. (Bharti) asked me not to cry as she would purchase sweets. I stated to her that I did not require any sweet and I wanted to go back to my house. Even then I was crying. The car by that time reached the rail gate near Duttapukur. Pillar of the rail gate was down. As a result all cars were stopped there. At that time Bidyut Kaku told somebody to lift the pillar. That man replied that after the passing of the train the pillar would be lifted. That was a labhel crossing. I requested them to release me. Then these accused persons stated to me that after receiving Rs.15,00,000/- from my father I would be released. Then I started crying out. Thereafter the rail gate was opened. At that time they started the car. I again requested them to release me. But these accused at the point of gun told that if I shouted I would be finished. That was a small gun. (Revolver) . The man who fled away showed me the gun. Then the car was proceeding and in front of our factory gate at Duttapukur I marked Biraj Kaku and my third uncle Gopal were standing there. I also found neighbouring people assembled there. Then the car was stopped. Thereafter Biraj Kaku and Gopal Kaku took me inside the factory.”

19. On conjoint perusal of the aforesaid portion of deposition of PW3 read with depositions of PW7, PW1, PW2, PW8 and PW9 a question arose as to whether these evidence of the prosecution witnesses are sufficient to attract the provision of Section 364A IPC or not as against the present appellants.

20. Mr. Partha Sarathi Bhattacharyya, learned counsel for the present three appellants placing his reliance upon the reported decision of **Netra Pal vs. The State (NCT of Delhi)** reported in **2001 CrLJ 1669** contended that since before the learned trial court the prosecution has miserably failed to prove that the alleged kidnapping was for ransom and such demand for ransom was at all communicated either to the de facto complainant or to any of his relations asking for the payment of ransom, Section 364A IPC cannot be attracted as against the present appellants. It has also been argued by Mr. Bhattacharyya, learned advocate for the present appellants that even for the sake of argument it is admitted that the present three appellants disclosed before the aforementioned PWs that they kidnapped the victim boy for ransom of Rs.14/15 lakhs, Section 364A IPC cannot be attracted in absence of communication of demand.

21. Mr. Bhattacharyya, learned advocate for the appellant thus argued that while passing the impugned judgement learned trial court overlooked the ingredients of Section 364A IPC and at the same time had not discussed as to how he found the present appellants guilty under Section 364A IPC and thus, the conviction of present appellants under Section 364A IPC cannot be sustained.

22. Per contra, Ms. Zareen N Khan, learned Advocate duly assisted by Md. Kutubuddin, learned advocate for the State submitted before this Court that so far as the applicability of Section 364A IPC is concerned learned trial court is very much justified in passing the impugned judgement in view of the evidence of PW3 vis-à-vis the evidence of the other private witnesses

whose evidence are found not only convincing but also corroborative in nature.

23. It is thus submitted that the impugned judgement does not suffer from any infirmity and thus the same may be upheld by dismissing the instant three appeals.

24. Since scope and applicability of Section 364A IPC have been elaborately discussed in the reported decision of **Shaik Ahmed vs. State of Telengana** reported in (2021) 9SCC 59 we consider it necessary to look to the relevant portion of the reported decision of **Shaik Ahmed (supra)** which is as under:-

“11. Although the Law Commission has in paragraph 16.100 proposed [Section 364A](#), which only stated that whoever kidnaps or abducts any person with intent to hold that person for ransom be punished for a term which may extend to 14 years. Parliament while inserting [Section 364A](#) by Act No.42 of 1993 enacted the provision in a broader manner also to include kidnapping and abduction to compel the Government to do or abstain from doing any act or to pay a ransom which was further amended and amplified by Act No.24 of 1995. [Section 364A](#) as it exists after amendment 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 inter-governmental organisation or any other person to do or abstain from doing any act or to pay a ransom, shall be punishable with death, or imprisonment for life, and shall also be liable to fine.”

12. We may now look into [section 364A](#) to find out as to what ingredients the Section itself contemplate for the offence. When we paraphrase [Section 364A](#) following is deciphered:-

(i) “Whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction”

(ii) “and threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt,

(iii) or causes hurt or death to such person in order to compel the Government or any foreign State or international inter- governmental organisation or any other person to do or abstain from doing any act or to pay a ransom”

(iv) “shall be punishable with death, or imprisonment for life, and shall also be liable to fine.”

13. The first essential condition as incorporated in [Section 364A](#) is “whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction”. The second condition begins with conjunction “and”. The second condition has also two parts, i.e., (a) threatens to cause death or hurt to such person or (b) by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt. Either part of above condition, if fulfilled, shall fulfill the second condition for offence. The third condition begins with the word “or”, i.e., or causes hurt or death to such person in order to compel the Government or any foreign State or international inter-governmental organisation or any other person to do or abstain from doing any act or to pay a ransom. Third condition begins with the word “or causes hurt or death to such person in order to compel the Government or any foreign state to do or abstain from doing any act or to pay a ransom”.

[Section 364A](#) contains a heading “kidnapping for ransom, etc.” The kidnapping by a person to demand ransom is fully covered by [Section 364A](#).

14. We have noticed that after the first condition the second condition is joined by conjunction “and”, thus, whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction and threatens to cause death or hurt to such person.

15. The use of conjunction “and” has its purpose and object. [Section 364A](#) uses the word “or” nine times and the whole section contains only one conjunction “and”, which joins the first and second condition. Thus, for covering an offence under [Section 364A](#), apart from fulfillment of first condition, the second condition, i.e., “and threatens to cause death or hurt to such person” also needs to be proved in case the case is not covered by subsequent clauses joined by “or”

.....

20. This court held that when the provisos 1 & 2 are separated by conjunctive word “and”, they have to be read conjointly. The requirement of both the proviso has to be satisfied to avail the benefit. Paragraph 8 is as follows:- “8. The language of the rule is plain and simple. It does not admit of any doubt in interpretation. Provisos (i) and (ii) are separated by the use

of the conjunction “and”. They have to be read conjointly. The requirement of both the provisos has to be satisfied to avail the benefit. Clauses (a) and (b) of proviso (ii) are separated by the use of an “or” and there the availability of one of the two alternatives would suffice. Inasmuch as cement and asbestos fibre used by the appellants in the manufacture of their finished excisable goods are liable to duty under different tariff items, the benefit of pro forma credit extended by Rule 56-A cannot be availed of by the appellants and has been rightly denied by the authorities of the Department.”

21. Thus, applying the above principle of interpretation on condition Nos. 1 & 2 of [Section 364A](#) which is added with conjunction “and”, we are of the view that condition No.2 has also to be fulfilled before ingredients of [Section 364A](#) are found to be established. [Section 364A](#) also indicates that in case the condition “and threatens to cause death or hurt to such person” is not proved, there are other classes which begins with word “or”, those conditions, if proved, the offence will be established. The second condition, thus, as noted above is divided in two parts- (a) and threatens to cause death or hurt to such person or (b) by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt.

22. Now, we may look into few cases of this Court where different ingredients of [Section 364A](#) came for consideration. We may first notice the judgment of this Court in *Malleshi Vs. State of Karnataka*, (2004) 8 SCC 95. The above was a case where kidnapping of a major boy was made by the accused for ransom and before this Court argument was raised that demand of ransom has not been established. In the above case, the Court referred to [Section 364A](#) and in paragraph 12 following was observed:-

“12. To attract the provisions of [Section 364-A](#) what is required to be proved is: (1) that the accused kidnapped or abducted the person; (2) kept him under detention after such kidnapping and abduction; and (3) that the kidnapping or abduction was for ransom. Strong reliance was placed on a decision of the Delhi High Court in *Netra Pal v. State (NCT of Delhi)* [2001 Cri LJ 1669 (Del)] to contend that since the ransom demand was not conveyed to the father of PW 2, the intention to demand was not fulfilled.”.....

33. After noticing the statutory provision of [Section 364A](#) and the law laid down by this Court in the above noted cases, we conclude that the essential ingredients to convict an accused under [Section 364A](#) which are required to be proved by prosecution are as follows:-

(i) Kidnapping or abduction of any person or keeping a person in detention after such kidnapping or abduction; and

(ii) threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt or;

(iii) causes hurt or death to such person in order to compel the Government or any foreign State or any Governmental organization or any other person to do or abstain from doing any act or to pay a ransom.....”

25. Keeping in mind the propositions of law with regard to Section 364A IPC as enunciated in the reported decision of **Shaik Ahmed** (supra) if we look to the factual aspects as involved in these appeals, it appears to us that the first ingredients for attracting Section 364 A IPC has been proved by the prosecution by adducing clinching evidence by the prosecution witnesses and we have upheld the conviction of the present appellants on the score.

26. In order to arrive at a logical conclusion as to whether the other two ingredients namely; Clause ii and Clause iii of paragraph 33 of the reported decision of **Shaik Ahmed(supra)** have been proved as against the present appellants beyond reasonable doubt, it appears to us that PW3 i.e. victim boy though in his examination-in-chief stated that after his kidnapping from the P.O the accused persons stated to him that after receiving 15 lakhs from his father he would be released and when he started crying and repeatedly requested to release him the accused persons at the gun point conveyed to him that if he went on shouting he would be finished. It thus appears from the examination-in-chief of PW3 that there was demand of ransom by the present appellants from him coupled with a threat to cause death by their direct conduct which reasonably gave apprehension to the victim boy that he might be put to death if the demand of the appellants is not fulfilled. At this juncture a question arises as to how far this testimony of PW3 can be

believed. On perusal of the exhibits it reveals that immediately after the next day of occurrence of the alleged incident PW3 was taken to PW13, a Judicial Magistrate who recorded his statement under Section 164 Cr.P.C (Exhibit 5). On perusal of such statement (Exhibit 5) it appears to us that the victim boy did not disclose anything with regard to the threat as alleged to have been given by the present appellants for demand of ransom for which a reasonable apprehension arose in his mind that he would die if such demand is not fulfilled. The omission on the part of PW3 to state anything with regard to the alleged threat before the Judicial Magistrate (PW13) immediately after the next day of the alleged incident in our considered view tantamounts to a material contradiction within the meaning of Explanation to Section 162 of Code of Criminal Procedure read with Section 145 of the Evidence Act.

On perusal of the written complaint (Exhibit 1) read with evidence of PW1, PW2, PW11, PW8 and PW9, it reveals that nowhere in the said written complaint and/or none of the aforementioned prosecution witnesses adduced an iota of evidence to the effect that immediately after kidnapping of the victim boy the present appellant threatened him to cause his death for which a reasonable apprehension arose either in the mind of the PW3 or in the mind of PW1, PW2, PW7, PW8 and PW9 that PW3 (victim boy) might be put to death if the alleged demand for ransom by the present appellant was not fulfilled.

27. In view of the discussion made hereinabove it appears to us that though before the learned trial court the prosecution is successful in proving the first ingredient but has miserably failed to prove ingredient nos. (ii) and

(iii) to bring home the charge under Section 364A IPC and thus the conviction of the present three appellants under the said section cannot be sustained.

28. With regard to the guilt of the present appellant under Section 120B of the Indian Penal Code as found by the learned trial court in the impugned judgement. Mr. Bhattacharyya, learned counsel for the appellant in course of his argument took us to the provisions of Section 120B of the Indian Penal Code. It is submitted by MR. Bhattacharyya, that on conjoint perusal of the evidence of the prosecution witnesses there was nothing on record to establish that all the appellants met together and planned strategy to kidnap the PW3 and make demand for ransom. It is thus argued that in absence of such evidence learned trial court has committed gross error of fact and law in holding the present appellant guilty under Section 120B of the Indian Penal Code.

29. Per contra, Ms. Zareen N Khan submits before this court that on appreciation of the evidence of the prosecution witnesses it has become evident that the action of the appellants are such that there was a meeting of mind of the present appellants prior to commission of offence of kidnapping of PW3 and therefore learned trial court made no mistake in holding the present appellant guilty under Section 120B of the Indian Penal Code.

30. We had given our due thought over the submissions of the learned advocates of the rival parties. In our estimation the reported decision of **Suman Sood @ Ramaljeet Kaur vs. State of Rajasthan** reported in (2007)

5 SCC 634 is very much relevant in this regard and the relevant portion of the same is reproduced hereunder:-

"47. True it is that there is no direct evidence to show that Suman Sood was a party to the conspiracy in kidnapping Rajendra Mirdha and in detaining him at House No.B-117, Model Town. But it is well settled that an inference as to conspiracy can be drawn from the surrounding circumstances inasmuch as normally, no direct evidence of conspiracy is available.

48. In Halsbury's Laws of England, (4th Edn.; Vol. 11; para 58); it has been stated;

"Conspiracy consists in the agreement of two or more persons to do an unlawful act, or to do a lawful act by unlawful means. It is an indication offence at common law, the punishment for which is imprisonment or fine or both in the discretion of the Court. The essence of the offence of conspiracy is the fact of combination by agreement. The agreement may be express or implied, or in part express and in part implied. The conspiracy arises and the offence is committed as soon as the agreement is made; and the offence continues to be committed so long as the combination persists, that is until the conspiratorial agreement is terminated by completion of its performance or by abandonment or frustration or however, it may be. The actus reus in a conspiracy is the agreement to execute the illegal conduct, not the execution of it. It is not enough that two or more persons pursued the same unlawful object at the same time or in the same place; it is necessary to show a meeting of minds, a consensus to effect an unlawful purpose. It is not, however, necessary that each conspirator should have been in communication with every other."

49. In Bhagwan Swarup v. State of Maharashtra, (1964) 2 SCR 368 : AIR 1965 SC 682; this Court stated; "The essence of conspiracy is, therefore, that there should be an agreement between persons to do one or other of the acts described in the section. The said agreement may be proved by direct evidence or may be inferred from acts and conduct of the parties. There is no difference between the mode of proof of the offence of conspiracy and that of any other offence; it can be established by direct evidence or by circumstantial evidence". (emphasis supplied)

50. In Baburao Bajirao Patil v. State of Maharashtra, (1971) 3 SCC 432, this Court observed that there is seldom, if ever, that direct evidence of conspiracy is forthcoming. Conspiracy from its very nature is conceived and hatched in complete secrecy, for otherwise the whole purpose would be frustrated.

51. In Kehar Singh v. 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".

52. *In Nazir Khan v. State of Delhi*, (2003) 8 SCC 461 : AIR 2003 SC 4427 : JT 2003 (Supp) 1 SC 200, this Court observed;

"Privacy and secrecy are more characteristics of a conspiracy, than of a loud discussion in an elevated place open to public view. Direct evidence in proof of a conspiracy is seldom available, offence of conspiracy can be proved by either direct or circumstantial evidence. It is not always possible to give affirmative evidence about the date of the formation of the criminal conspiracy, about the persons who took part in the formation of the conspiracy, about the object, which the objectors set before themselves as the object of conspiracy, and about the manner in which the object of conspiracy is to be carried out, all this is necessarily a matter of inference".

53. *Keeping in view the principles laid down in the above decisions, if we consider the case of Suman Sood, it is clear that an inference drawn by both the Courts as to criminal conspiracy by her cannot be held ill-founded. From the prosecution evidence, it is amply proved that Rajendra Mirdha had been kidnapped by Daya Singh and his 'companions'. He was to be kept at a secret place. Suman Sood was very much aware of the said fact. In fact, she was all throughout keeping watch on the victim. So much so that she used to give food, medicine, etc. since victim Rajendra Mirdha was not keeping good health. In the facts and circumstances of the case, therefore, in our considered view, both the courts were right in convicting Suman Sood for offences punishable under [Sections 365](#) read with 120B, 343 read with 120B and 346 read with 120B, [IPC](#). We find no infirmity in the reasoning or conclusion of the courts below and see no ground to interfere with the said finding."*

31. Keeping in mind the principles as laid down in the reported decision of **Suman Sood (supra)** we once again propose to apprise the evidence of the

prosecution witnesses more specifically private prosecution witnesses wherefrom it would reveal that all the four convicts out of which three are the present appellants on the relevant day and hour forcefully took away the victim PW3 when he was playing with his friends in front of his house and after their escape from the P.O they all remained together in the said car and at the time of their interception the present three appellants and another convict Biswanath were found inside the car along with the victim boy (PW3) . From the above conduct of the present appellants which cannot be dispelled even during their respective cross-examination, a reasonable inference can be drawn that an agreement was arrived at by and between the present appellants prior to the commission of kidnapping which has been fulfilled by the execution of the said plan. In view of such we have no hesitation to hold that even in absence of any direct evidence learned trial court was not mistaken to hold the present appellants guilty under Section 120B of the Indian Penal Code.

32. As a result the instant appeal succeeds in part. The conviction of the present three appellants namely; Tapashi Ghosh, Bidyut Mallick and Bharti Gayen under Section 364A IPC as passed by the learned Additional Sessions Judge, 5th Court, Barasat, North-24-Parganas, in Sessions Trial No. 2(2)2003 arising out of Sessions Case No.30(9)2002 is hereby set aside . However the conviction of the present three appellants under Section 363 IPC and 120B IPC as passed in the impugned judgement is hereby upheld.

33. It reveals that after passing of the impugned judgement all the above named three appellants remained in custody for more than seven years. Such being the position and since the present appellants are on bail, all the

present appellants namely; Tapashi Ghosh, Bidyut Mallick and Bharti Gayen be released from their respective bail bonds with immediate effect.

34. Department is directed to send down the trial court record along a copy of this judgement at the earliest.

35. Let a copy of this judgement along with the LCR be sent down at once.

36. Urgent Photostat certified copy of this judgement, if applied for, be given to the parties on completion of usual formalities.

I agree.

(Chitta Ranjan Dash, J.)

(Partha Sarathi Sen, J.)