

IN THE HIGH COURT OF MADHYA PRADESH
BENCH AT INDORE

(DB: Hon'ble Mr. Justice Shantanu Kemkar and
Hon'ble Mr. Justice M.C. Garg)

Criminal Appeal No.213/2006

Shahid Khan S/o Rehman Khan
Kadeer Khan S/o Sikandar Khan
Habeeb Khan alias Habbu S/o Kherati Khan
Mohit Khan alias Mulla S/o Vahid Khan

Vs.

State of Madhya Pradesh

Shri PK Shukla, learned Senior counsel with Shri MS

Chouhan, learned counsel for the appellants.

Shri BL Yadav, learned Deputy Advocate General for the
respondent / State.

JUDGMENT

(Passed on this day of June, 2013)

Per: M.C. Garg, J.

The appellants were sent for trial in Crime No.523/2005 to face charge under section 364-A of IPC on the allegation that the appellants at about 7.00 am on 6.12.2004 in Gram Kohadi near the way towards Shamshan falling about 18 kilometers north of Police Station Kalapipal, kidnapped the complainant Dinesh Chandravanshi, kept him under detention and after threatening him with knife and revolver of death obtained an affidavit from him, so as to exonerate one Mahesh,

who was facing trial in another matter in which the complainant was one of the witness.

2. The case of the prosecution is based upon the complaint lodged by complainant Dinesh Chandravanshi, who gave the written report to the police having been written on 8.12.2004 which is Ex.P-6. On that basis, FIR was registered on 14.12.2004 vide Ex.P-7 and the case was registered under sections 365, 368 and 506/34 of IPC. In short, the case of the prosecution reads as under:-

3. अभियोजन का पक्ष संक्षेप में इस प्रकार है कि दिनांक 05.07.04 को ग्राम आगखेड़ी में महेश पिता बद्रीप्रसाद की हत्या होने के संबंध में प्रस्तुत प्रकरण के विछुब्ध दिनेश चन्द्रवंशी गवाह था। जिसमें अभियुक्त हब्बू खां का लड़का को अभियुक्त बनाया गया था और उस प्रकरण में विछुब्ध दिनेश को गवाही देने जाना था। घटना दिनांक 06.12.04 दिन सोमवार की सुबह 7 बजे जब दिनेशचन्द्रवंशी अपने खेत से उसके घर जा रहा था तो रास्ते में खड़ी एक सफेद ट्रेक्स गाड़ी में से शाहिद खां ने चाकू और मोहित खां ने रिवाल्वर अड़ाकर दिनेश को ट्रेक्स गाड़ी में बैठा लिया। जहां हब्बू खां और कदीर खां चाकू लेकर बैठे और सिकन्दर खां भी बैठा था, अभियुक्तगण ने जान से मार देने की धमकी देकर दिनेश का ट्रेक्स में बिठाते हुए, उसका मुंह टावेल से बांध दिया। रास्ते में गाड़ी के अंदर दिनेश का एक बार मुंह खोले जाने पर उसने देखा कि काचीखेड़ा गांव और स्कूल पड़ा और फिर अभियुक्तगण ने उसका मुंह बांध दिया और शाजापुर जाकर गाड़ी रोकी और एक कमरे में चिल्लाने पर जान से मार देने की धमकी देते हुए 3 बजे से 6 बजे तक बंद रखा। इसके बाद सभी अभियुक्तगण कमरे में अंदर आये और मोहित खां ने दिनेश को तीन गालियां खाने के लिए देते हुए, जबरदस्ती गोलियां खिला दी जिससे विछुब्ध दिनेश को कुछ नशा सा हो गया और फिर विछुब्ध दिनेश सहित सभी लोग अनिल गोभुज वकील साहब के पास गये और 50/- रुपये के स्टाम्प पर लिखापढ़ी करते हुए दिनेश से दस्तखत करा लिये। जिस पर ट्रेक्स वाले हफीज खां ने भी दस्तखत किये और फिर रास्ते में ट्रेक्स में बैठाकर वापिस लाये और सुबह 6 बजे गांव की पुलिया पर दिनेश को यह धमकी देते हुए उतारकर चले गये कि महेश के मर्डर केस में गवाही देने नहीं जाना नहीं तो जान से खत्म कर देंगे, और 50 हजार रुपये देने का भी अभियुक्तगण ने दिनेश को कहा। विछुब्ध दिनेश को गालियां का नशा होने से उसने दूसरे दिन विष्णुप्रसाद और बद्रीप्रसाद को

सारी घटना बतायी और दिनांक 08.12.04 को लिखित आवेदन पत्र पुलिस थाना कालापीपल एवं अन्य अधिकारियों को दिया गया, जो प्रदर्श पी-6 है। जिसके आधार पर पुलिस द्वारा दिनांक 14.12.04 को प्रदर्श पी-7 की प्रथम सूचना रिपोर्ट धारा 365, 368, 506/34 भा.द.वि. के अंतर्गत दर्ज किया गया।

3. The police investigated the matter and arrested the appellants and carried out further investigation. Then they filed challan on 17.2.2005 under sections 365, 368, 506, 323 and 347/34 of IPC. However, at the instance of Sessions Court while dealing with the appellants for grant of bail, section 364-A of IPC was also added in the challan and thus the case was committed to sessions.

4. Charges were framed against the appellants under section 364-A of IPC to which the appellants pleaded denial and stated that they have been falsely implicated in this case. A plea was also taken by the appellant no.4 that at the time of incident, he was admitted in the hospital in Bhopal. However, no evidence was led by the appellants in their defence.

5. On behalf of the prosecution, 18 witnesses were examined. PW-6 Dinesh Chandravanshi in his deposition has deposed as under:-

1. मैं अभियुक्त शाहिद एवं सभी आरोपीगण को पहचानता हूँ। आज से करीब 5-6 माह पहले की बात है सुबह 6 बजे का समय था। मैं टयूबवेल पर से अपने घर जा रहा था। खोखराकला वाले हफीज खां की जीप रास्ते में मशान शमशान के पास खड़ी थी।

2. मैं वहां से जैसे ही निकलने लगा वैसे ही आरोपी शाहिद खां, मोहित खां, कदीर खां, सिकंदर और हब्बू खां मुझसे झूम

गये और मोहित खां ने रिवाल्वर अड़ा दिया बाकी आरोपीगण ने चाकू अड़ा दिया और कहने लगे कि जीप में बैठ जा नहीं तो जान से खत्म कर देंगे। मैंने जीप में बैठने मना किया तो अभियुक्त मोहित एवं शहीद खां ने मुंह पर टावेल बांध दिया और जीप में बीच की सीट पर पटक दिया और मेरे उपर आरोपीगण ने चाकू अड़ा दिया और कहने लगे कि चिल्लाचोट की तो जना से यहीं खत्म कर देंगे फिर इन लोगों ने जीप वहां से आगे बढ़ा दी।

3. रास्ते में जीप जा रही थी तो एक जगह पर मेरा मुंह आरोपीगण ने खोला उस समय मैंने एक स्कूल का पोस्टर देखा था उस पर मैंने पढ़ा था कि उस पर काचीखेड़ी लिखा था उसके बाद यह जीप लेकर महुपूरा शाजापुर ले गये और महुपुरे में आरोपीगण ने एक कमरे में ले जाकर बंद कर दिया उस समय दिन के तीन बजे थे आरोपीगण कमरे के बाहर बैठे थे उसके उपरांत शाम को 6 बजे कमरे का फाटक खोला और सभी आरोपीगण अंदर आये और साथ में तीन गोलियां लेकर आये मोहित खां ने मुझसे कहा कि गोलियां खा लो वह गोलियां हरे रंग की थीं। मैंने मना किया तो इस पर आरोपीगण ने कहा था कि गोली नहीं खायेगा तो जान से मार देंगे सभी आरोपीगण ने मुझे जबरदस्ती तीनों गोलियां खिला दी थीं।

4. गोलियां खाने से मुझे बेहोशी आने लगी और नींद सताने लगी फिर आरोपीगण वहां से इस हालत में शाजापुर के नागनागनी रोड पर लेकर गये और वहां पर अनिल कुमार गोभुज के कार्यालय में ले गये थे वहां पर एक राजू नाम का व्यक्ति था और वहां जाकर आरोपियों ने उससे बात की उसके बाद फिर आरोपीगण मुझे लेकर एक दूसरे के यहां लिखापट्टी करने वाले के यहां लेकर गये थे। आरोपीगण ने वहां पर कोर स्टाम्प पर जो 50/-रुपये का था उस पर आरोपीगण ने दस्तखत करने का बोला था नहीं करेगा तो जान से मारने की धमकी दी उसी स्टाम्प पर एक जीप में एक साथ में था। हफीज ने भी दस्तखत किया था वहां से मुझे आरोपीगण वापस जहां लाकर पहले बंद किया था वहां ले आये। वहीं जीप खड़ी थी वहां से लगभग 8 सवा 8 बजे आरोपीगण ले चले थे।

5. आरोपीगण मुझे सुबह 6 बजे करीब गांव की पुलिया के पास छोड़ दिया छोड़ते हुए आरोपीगण ने कहा कि महेश के मर्डर के केस में गवाही देने मत जाना, रिपोर्ट करने मत जाना नहीं तो तुझे जान से मार देंगे। आरोपीगण ने कहा था कि अगर तू रिपोर्ट करने नहीं जायेगा तो तुझे 50,000/- रुपये देंगे इसके बाद मैं घर चला गया मैं दिन भर कभी ट्यूबवेल पर कभी घर आता जाता रहा। मुझे मंगलवार को होश हवास नहीं थी दिन भर नींद सताती रही थी।

6. मैंने फिर मंगलवार को ही विष्णुप्रसाद बद्रीप्रसाद को पांच व्यक्तियों के द्वारा अपहरण कर लेने की बात बतायी थी। और बुधवार को मैंने थाने में रिपोर्ट की थी मैंने अपहरण कर शाजापुर ले जाकर धमकाने की रिपोर्ट की थी।

7. मेरे द्वारा थाने पर की गयी लिखित रिपोर्ट प्र.पी.-6 है जिसके अ से अ भाग पर मेरे हस्ताक्षर हैं रिपोर्ट प्र.पी.-6 की

दोनों प्रति पर मेरे हस्ताक्षर हैं।

8. थाना कालापीपल पर पुलिस द्वारा की गई रिपोर्ट प्र.पी.—7 है जिसके अ से अ भाग पर मेरे हस्ताक्षर हैं। इसके बाद पुलिस मौके मुआयना के लिये ले गयी थी मौका नक्शा प्र.पी.—9 का बनाया था जिसके अ से अ भाग पर मेरे हस्ताक्षर हैं। पुलिस ने मेरे बयान लिये थे।

6. In his cross examination, except on the point of delay, the only suggestion given for the purpose of alleged false implication by the appellants is as follows:-

30. यह कहना गलत है कि हमारी ग्राम कोहडी की कृषि भूमि पर अभियुक्त कदीर खां एवं उसके पिता का कब्जा है। यह कहना गलत है कि मैं महेश की हत्या के मामले में अपने बयान बदलने के लिये अभियुक्त शहीद खां से एक लाख रुपये चाहता था। यह कहना गलत है कि शहीद खां ने रुपये देने से मना किया तो इस पर मैंने प्रस्तुत प्रकरण की झूठी रिपोर्ट कर दी थी।

31. यह कहना गलत है कि दिनांक 7 से 13 तारीख तक मेरी तबीयत पूरी तरह से अच्छी रही थी। यह कहना गलत है कि 8 तारीख को मेरी तबीयत अच्छी हो गयी थी। मुझे 8 तारीख को भी नींद और सुस्ती बनी हुई थी। स्वतः कहा रोज आता रहता था और चला जाता था।

7. While (PW-12) Vishnuprasad Khati has been declared hostile but PW-8 Badriprasad and PW-12 Vishnuprasad Khati have supported the case of the prosecution. (PW-11) Prahaladchand Shinde, who is notary, attested the affidavit of Dinesh Chandravanshi. A carbon copy of the affidavit is Ex.P-12. The entry of the register is Ex.P-13 of which copy of it given to the police is Ex.P-16. The register has been taken into possession by PW-6 Dinesh Chand alongwith Investigating Officer. PW-18 Babulal has also supported the case of the prosecution. From the deposition of Dinesh Chandravanshi and in particular paragraphs 5, 27 and

44 as also from the statement of Badriprasad PW-8, it is clear that before this incident, son of Badriprasad was murdered in which case, Bhure Khan, Shabuddin and Vakil Khan were impleaded as accused persons, amongst them one is the son of the appellant Habeeb Khan and in that case PW-6 Dinesh Chandravanshi is one of the witness. From the cross examination of PW-3 Rajeev Gobhuj, it is also clear that Anil Gobhuj was admitted in that case. It may be observed here that kidnapping of the complainant and obtaining an affidavit from him as well as pendency of a criminal case against one Mahesh, in which case, the complainant was a witness, attestation of the affidavit before the notary, there is no cross examination on behalf of the appellants.

8. Taking into consideration all these aspects, the Trial Court reached to the following conclusion:-

19. मामले के विक्षुब्ध एवं सिहारा साक्षी दिनेशचंद्र का यह कहना है कि जब वह घटना की सुबह उसकी ट्यूबवेल अर्थात् खेत से उसके घर जा रहा था तो रास्ते में शमशान के पास उसे अ.सा.-13 हफीज खां की जीप खड़ी दिखी और विक्षुब्ध दिनेश के वहां से निकलने पर आरोपी सईद उर्फ शाहिद खां, मोहित खां उर्फ मुल्ला एवं कदीर खां, सिकन्दर खां तथा हसीफ खां उर्फ हब्बू विक्षुब्ध से झूम गया और मोहित खां ने रिवाल्वर एवं अन्य आरोपीगण ने चाकू अड़ा दिया तथा विक्षुब्ध दिनेश को जीप में बैठने का कहते हुए, जान से मार देने की धमकी दी और मोहित उर्फ मुल्ला एवं सईद उर्फ शाहिद ने दिनेश के मुंह पर टावेल बांधते हुए, उसे पीछे की सीट पर पटक दिया और चिल्लाचोट करने पर जान से मार देने की धमकी दी। रास्ते में जब एक जगह विक्षुब्ध का मुंह खोला तो उसने रास्ते में ग्राम कापीखेड़ी लिखे होने की बात पढ़ी और अभियुक्तगण जीप से उसे महूपुरा शाजापुर ले गये और एक कमरे में बंद कर दिया एवं शाम के 6 बजे अभियुक्तगण ने फाटक खोला और कमरे में आते हुए जान से मार देने की धमकी देते हुए तीन गोलियां खिलाई और गोली खाने पर विक्षुब्ध दिनेश को

बेहोशी जैसी हालत में अनिल गोभुज अधिवक्ता के कार्यालय पर ले गये और फिर 50/- रुपये के स्टाम्प पर जान से मारने की धमकी देते हुए विष्णु दिनेश से हस्ताक्षर कराये, जिसके साथ ही अ.सा.-13 हफीज खां ने भी दस्तखत किये और फिर वापिस कमरे में लेकर बंद कर दिया और अगले दिन सुबह 6 बजे उसे गांव की पुलिया पर छोड़ते हुए महेश के मर्डर के केस में गवाही देने से मना करते हुए, रिपोर्ट करने से भी मना किया तथा जान से मार देने की धमकी देते हुए 50 हजार रुपये देने का लालच भी दिया। साक्षी द्वारा अगले दिन मंगलवार अर्थात् दिनांक 07.12.2004 को नींद सताना बताते हुए होंस-हवास नहीं रहना, किन्तु विष्णुप्रसाद और बद्रीप्रसाद को उसका अपहरण कर लेने की बात बताना और बुधवार अर्थात् दिनांक 08.12.04 को पुलिस थाने में रिपोर्ट करना बताते हुए, प्रदर्श पी.-6 की लिखित रिपोर्ट और प्रदर्श पी.-8 का नक्शा मौका को भी साक्षी ने उसके समक्ष बनाया जाना बताया है।

9. On the basis of the aforesaid conclusion, the Trial Court held that in this case, the appellants committed offence under section 364-A of IPC.

10. In defence, the appellants have pleaded lodging of the FIR after few days as one of the reason for disbelieving the case of the prosecution, inasmuch as, while document Ex.P-6 is alleged to have been written on 8.12.2004, the FIR registered on 14.12.2004, there is no explanation of delay. The other point is that complainant did not receive a sum of Rs.50,000/- which according to Dinesh Chandravanshi, were to be paid by Mohit Khan. Learned counsel for the appellants have also pleaded that in this case, even if the case of the prosecution is taken at the highest offence, if any, would not be under section 364-A of IPC.

11. This suggestion virtually proves the case of the

prosecution. The question of delay has been discussed by the Trial Court in paragraphs 20 and 21 of the judgment in the following words:-

20. अ.सा.-6 विक्षुब्ध दिनेशचंद्र के कथनों में वर्णित प्रदर्श पी-6 की टाईप्ड रिपोर्ट 08.12.04 के रूप में दिनांकित है। जबकि प्रदर्श पी.-7 की प्रथम सूचना रिपोर्ट दिनांक 14.12.04 के रूप में दिनांकित है और अ.सा.-18 अनुसंधान अधिकारी और तत्कालीन नगर निरीक्षक बी.एल. अवस्थी के कथनों के अनुसार उसे प्रदर्श पी-6 की लिखित रिपोर्ट दिनांक 14.12.04 को प्राप्त हुई है और इसी आधार पर उसने प्रदर्श पी-7 की रिपोर्ट भी दिनांक 14.12.04 को ही दर्ज की है।

21. हालांकि अ.सा.-6 दिनेशचंद्र द्वारा उसके प्रतिपरीक्षण के पैराग्राफ क्रमांक-9,16 एवं 17 में यह बताया है कि प्रदर्श पी-6 के लिखित आवेदन पत्र, उसके द्वारा कालापीपल में ही टाईपिंग करने वाले व्यक्ति अजयकुमार से उसके घर पर कम्प्यूटर से टाईप कराया था, किन्तु प्रतिपरीक्षण के पैराग्राफ क्रमांक-9, 10, 11 एवं 14 का सम्मिलित प्रभाव यह निकलता है कि साक्षी ने लिखित रिपोर्ट प्रदर्श पी-6 अथवा पुलिस को दिनांक 08.12.04 को ही दे दिया था। किन्तु प्रदर्श पी-7 की रिपोर्ट पर उसके 5-6 दिन बाद हस्ताक्षर कराये थे। हालांकि विलक्षण रूप से यह साक्षी उसके प्रतिपरीक्षण के पैराग्राफ क्रमांक-32 में रिपोर्ट लिखाने का अनुभव होना तो बताता है, किन्तु पूर्व में कोई रिपोर्ट नहीं लिखाला अथवा अन्य किसी मामले में गवाही नहीं देना भी बताता है। ऐसी दशा में विक्षुब्ध दिनेश अ.सा.-6 का यह कथन कि उसे रिपोर्ट लिखाने का अनुभव है। एक आकस्मिक कथन ही माना जायेगा।

12. Reading these paragraphs alongwith statement made by PW-6 Dinesh Chandravanshi, who stated that he had given a complaint on the same date to the police and explained the delay, registration of the FIR by the police later, could not prove the defence in the case of the prosecution. In any event, there is another aspect of the matter, the appellants also filed carbon copy of the affidavit.

13. In this case, Dinesh Chandravanshi has supported the case of the prosecution in the case of Mahesh. The story

cooked up by him was only to blackmail the appellants. In this regard they have placed on record the deposition of Dinesh Chandravanshi in the case of Mahesh. The relevant deposition made by the complainant is reproduced here as under:-

1. मैं न्यायालय में उपस्थित अभियुक्तगण को पहचानता हूँ। मैं महेश पिता बद्रीप्रसाद को भी जानता था। महेश बलाई जाति का था। अभियुक्तगण मेवाती जाति के हैं।
2. आज से करीब 4-5 माह पहले की बात है। दिन को साढ़े 12 बजे मैं कोहड़ी गांव में रिंग वाला कुंआ से बस में बैठकर खोंखरा बाजार जा रहा था यह बस अमृत बस थी यह बस सोनकच्छ से कुरावर जा रही थी। इसी बस में महेश पिता बद्रीलाल भी यात्रा कर रहा था, उसी बस में तीनों अभियुक्तगण भी थे। बस चल रही थी उस समय बस में मैं, रामबाबू और मेरे पास ही महेश और अभियुक्तगण खड़े थे। बस भरी हुई थी उसमें ज्यादा सवारियां थीं। वकील खां, ताजउद्दीन और भूरू खां ने महेश से बस में आगे बढ़ने का कहा। महेश ने कहा कि आगे सवारी अधिक है इसलिए मैं आगे नहीं जा सकता। इस पर तीनों अभियुक्तगण ने कहा बलट्टे ढेड़ तेरी अकल ठिकाने नहीं है। इसके बाद भूरूखां ने महेश को पकड़ा व ताजउद्दीन ने उसे झापड़ मारा और वकील खां ने चाकू से मारना शुरू कर दिया। वकील खां ने महेश को चाकू का पहला वार उल्टे हाथ की तरफ पसली के नीचे पेट पर मारा व दूसरा वार सीधे हाथ के कंधे पर पीछे की ओर किया व तीसरा वार उल्टे हाथ के कंधे पर पीछे किया और चौथा वार उल्टे हाथ की कोहनी पर किया। इस पर महेश चिल्लाया तो बस घाट वाली पुलिया के वहां खड़ी हो गई वहां चिल्लाचोंट हुई तो तीनों अभियुक्तगण बस में से उतरकर भाग गये। महेश को चोटों से खून निकलने लगा तो मैं व रामबाबू दोनों महेश को उठाकर उस से बाहर लाये फिर वह बस चली गई।
3. इसके करीब 4-5 मिनट बाद कालापपील की ओर जाने वाली एक दूसरी अमृत बस वहां आई उसमें बैठाकर मैं व रामबाबू दोनों महेश को कालापपील ले जा रहे थे तो आगखेड़ी गांव के वहां पर होटल पर महेश के पिता बद्रीप्रसाद दिखे तो हमने आवाज देकर उन्हें बुलाया और बस में बैठा लिया। महेश की मृत्यु चलती बस में ही हो गई। फिर बस को सीधे कालापपील अस्पताल लेकर गये। फिर वहां बद्रीप्रसाद के सुपुर्द लाश की ओर मैं थाना कालापपील पर गया दिन को करीब 2 सवा दो बजे मैंने थाना कालापपील पर रिपोर्ट की। मेरी रिपोर्ट चौबे थानेदार साहब ने लिखी थी मैंने थाने पर जो रिपोर्ट लिखाई थी वह रिपोर्ट प्र.पी.-1 है इस पर ए से ए भाग पर मेरे हस्ताक्षर हैं।
4. फिर पुलिस वाले कालापपील के अस्पताल में आये थे मैं भी वहां गया था मुझे पुलिस ने कार्यवाही करने के लिए गवाह बनाया था सफीना फार्म प्र.पी.-2 पर ए से ए भाग पर मेरे हस्ताक्षर हैं।

5. पुलिस ने मेरे सामने महेश की लाश का पंचायतनामा तैयार किया था उस समय हमें लाश दिखाई थी। लाश उस समय चित अवस्था में थी और खूनाखून हो रही थी। लाश पर पसली के नीचे उल्टे हाथ तरफ चोट थी, इसके अलावा सीधे हाथ के कंधे पर पीछे पीठ पर व एक चोट उल्टे हाथ के कंधे पर और एक उल्टे हाथ की कोहनी पर थी। पंचायतनामा लाश प्र.पी.-3 है इस पर ए से ए पी-3 भाग पर मेरे हस्ताक्षर हैं।

नोट – (आदेश पत्र में दर्शाये कारण से साक्षी का प्रतिपरीक्षण स्थगित किया गया)

साक्षी को बयान पढ़कर सुनाया

सही होना स्वीकार किया।

मेरे

उद्बोधन पर टंकित

जे.के. जैन

जे.के. जैन

वि.न्या.शाजापुर

वि.न्या.शाजापुर

14. However, what is important is the noting of the learned Judge soon after the request was made for adjournment which again supports the case of the prosecution. The noting of the Court in this case are as follows:-

जब साक्षी को कहा गया कि उसका प्रतिपरीक्षण आगामी तारीख के लिए स्थगित किया जा रहा है तो साक्षी ने प्रगट किया कि अभियुक्तगणन और उनके परिवार के हब्बू खां, सईद खां, मोईत खां, कदीर खां और सिकन्दर खां चाकू और रिवाल्वर लेकर गये सोमवार सुबह 6 बजे मुझे जबरन जीप में बैठाया और मुझे शाजापुर लाये और वहां अनिल गोभुज अधिवक्ता के कार्यालय में ले गये और वहां (साक्षी ने राजीव गोभुज अधिवक्ता की ओर इशारा कर किया) यह व्यक्ति भी मुझे उन लोगों के साथ एक जगह ले गया और 50 रुपये के स्टाम्प पर मुझसे कुछ लिखापढ़ी करवा ली लिखापढ़ी करवाने के पहले मुझे जबरन गोलियां खिलाई गईं थी जिसके कारण मैं पूरी तरह सजग नहीं था। बाद में मुझे दूसरे दिन इन लोगों ने मेरे गांव वापस सुबह 6 बजे पुलिया पर छोड़ दिया। आज भी मैं पुलिस की सुरक्षा में ही न्यायालय आया हूँ।

15. On the aforesaid aspect, there is no cross examination which supports the case of the prosecution inasmuch as, the story of the prosecution that on 6.12.2004, the

incident happened in the manner as was deposed by Dinesh Chandravanshi, is reiterated by Dinesh Chandravanshi even after his examination in the case of Mahesh. In that statement, Dinesh Chandravanshi reiterated what had happened with him.

16. In the aforesaid circumstances, in the absence of any cogent defence led by the appellants, there is no reason to disbelieve the version of Dinesh Chandravanshi. As such, the conclusion drawn by the Trial Court in paragraphs 31, 32 and 33, does not call for any interference by us. Similarly and for the same reason, we also agree with the observations made by the Trial Court in paragraph 34. However, now the question is as to whether the conclusion drawn by the Trial Court makes out a case under section 364 or under section 364-A of IPC.

17. In the judgment delivered by Delhi High Court in the case of **Mukesh Vs. State of Delhi** delivered on 23.9.2011 has discussing the difference between the provisions under section 362-A and section 326. Some observations are relevant which are reproduced here as under:-

“26. Section 364-A IPC was inserted in 1993, through an amending Act (Act 42 of 1993). Before introduction of Section 364-A IPC, by Act No.42 of 1993, (applicable w.e.f. 22.5.1993) the only penal provision for punishing the accused for kidnapping or abduction was for murdering or so

disposing of the victim or to put the victim in danger of being murdered. Section 364 IPC existed for that purpose; it reads as follows:-

"364. Kidnapping or abducting in order to murder

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

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

"364-A. Kidnapping for ransom, etc. -

"Whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction, and threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt, or causes hurt or death to such

person in order to compel the Government or "any other person" to do or abstain from doing any act or to pay a ransom, shall be punishable with death, or imprisonment for life, and shall also be liable to fine."

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

"Statement of Objects and Reasons.-- Kidnappings by terrorists for ransom, for creating panic amongst the people and for securing release of arrested associates and cadres have assumed serious dimensions. The existing provisions of law have proved to be inadequate as deterrence. The Law Commission in its 42nd Report has also recommended a specific provision to deal with this menace. It [was] necessary to amend the Indian Penal Code to CrI.A.Nos.191, 224, 251, 272 & 368/2009 Page 11 provide for deterrent punishment to persons committing such acts and to make consequential amendments to the Code of Criminal Procedure, 1973."

The provision, as originally inserted was considered inadequate, when the offence of kidnapping for ransom in order to compel any foreign State or international inter-governmental organization was committed. To cater to the menace of kidnapping for ransom in order to compel the foreign State or international inter-governmental organization, and to further widen the scope of Section the

words "any other person" already existing in Section 364-A prior to 1995 was substituted with words "any foreign State, international inter-governmental organization or any other person" by Act No.24 of 1995 in Section 364-A IPC, brought into force w.e.f. 26.5.1995. The provision, after amendment after 1995, reads as follows:

"Whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction, and threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt, or causes hurt or death to such person in order to compel the Government or (any foreign State or international intergovernmental organization or any other person) to do or abstain from doing any act or to pay a ransom, shall be punishable with death, or imprisonment for life, and shall also be liable to fine."

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

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

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

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

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

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

"According to Section 364A, whoever kidnaps or abducts any person and keeps him in detention and threatens to cause death or hurt to such person and by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt, and claims a ransom and if death is caused then in that case the accused can be punished with death or imprisonment for life and also liable to pay fine.

6. The important ingredient of Section 364A is the abduction or kidnapping, as the case may be. Thereafter, a threat to the kidnapped/abducted that if the demand for ransom is not made then the victim is likely to be put to death and in the event death is caused, the offence of Section 364A is complete. There are three stages in this Section, one is the kidnapping or abduction, second is threat of death coupled with the demand of money and lastly when the demand is not made, then causing death. If the three ingredients are available, that will constitute the offence under Section 364A of the Indian Penal Code. Any of the three ingredients can take place at one place or at different places...."

In the decision reported as *Suman Sood v State of Rajasthan* 2007 (5) SCC 634, it was held that: "57. Before the above section is attracted and a person is convicted, the prosecution must prove the following ingredients;

(1) The accused must have kidnapped, abducted or detained any person; (2) He must have kept such person under custody or detention; and (3) Kidnapping, abduction or detention must have been for ransom.

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

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

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

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

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

detenu.”

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

18. Paragraph 49 of the order is also relevant which concludes as to in what circumstances offence under section 364 would be made out. The said paragraph reads as under:-

“49. Thus, it is clear that to complete the offence, there should be proof that the abducted person was, after abduction, either killed, or injured, or was threatened with such acts, or the conduct of the abductors would result in reasonable apprehension of such consequence. The demand for ransom is another essential ingredient. This court is of the opinion that the conveying of ransom, coupled with threat to life, or bodily injury, conveyed to the victim, either overtly, or by conduct (of the abductors) is sufficient to complete the offence. The object of the provision, introduced through the amendment is to tackle the menace of kidnapping for ransom, or holding people forcibly to achieve a specific illegal objective. It is not necessary that the abducted individual's family or friends are asked to pay; the object may be totally

unconnected with them; yet, the demand would not be lawful. The injury or threat to injury part of the offence is couched in such wide terms that it is inessential for the prosecution to prove that the threat element was conveyed along with the demand for ransom. As long as the threat is discernable, and proved, the offence is said to have been established.”

19. The Apex Court has also discussed the distinction between section 364 and section 364-A of IPC delivered in the case of **Vishwanath Gupta Vs. State of Uttaranchal reported in (2007) 11 SCC 633.** The distinction drawn between two sections. Para- 9 & 17 of the aforesaid judgment are relevant which are reproduced hereunder for the sake of reference :

“Para 9.- The important ingredient of Section 364-A is the abduction or kidnapping, as the case may be. Thereafter, a threat to the kidnapped/abducted that if the demand for ransom is not made then the victim is likely to be put to death and in the event death is caused, the offence of Section 364A is complete. There are three stages in this Section, one is the kidnapping or abduction, second is threat of death coupled with the demand of money and lastly when the demand is not made, then causing death. If the three ingredients are available, that will constitute the offence under Section 364A of the Indian Penal Code. Any of the three ingredients can

take place at one place or at different places. In the present case the demand of the money with the threat perception has been made at (Haldwani) Nainital. The deceased were kidnapped at Lucknow and they were put to death at Unnao. Therefore, the first offence was committed by the accused when they abducted Ravi Varshney and Anoop Samant at Lucknow. Therefore, Lucknow could have territorial jurisdiction to try the case.

Para 17.- As regards the completion of Section 364A is concerned, something more is required for that offence. Section 364A was introduced in the IPC by the Criminal Amendment Act of 42 of 1993 which came into effect with from 22.5.1993 because of the increasing number of cases where the victim is abducted and a demand for money is raised with a threat perception or danger to the life on that person and that person is ultimately put to death. Such kind of offences are not covered under sub-section (2) of Section 181. It is not simply abduction or kidnapping. It is something more in ordinary case of abduction or kidnapping as defined in Sections 359 and 362. They are offence simplicitor of kidnapping and abduction. But here in the case of Section 364A something more is there that is, that a person was abducted from Lucknow and demand has been raised at Haldwani, Nainital with threat. If the amount is not paid to the abductor then the victim is likely to be put to death. In order to constitute an offence under Section 364A, all the ingredients have not

taken place at Lucknow or Unnao. The two incidents took place in the State of Uttar Pradesh that is abduction and death of the victims but one of the ingredients took place that is threat was given at the house of the victims at Haldwani, Nainital demanding the ransom money otherwise the victim will be put to death. Therefore, one of the ingredients has taken place within the territorial jurisdiction of Haldwani, Nainital. Therefore, it is a case wherein the offence has taken place at three places i.e. at Haldwani, Nainital, where the threat to the life of the victim was given and demand of money was raised, the victim was abducted from Lucknow and he was ultimately put to death at Unnao. Therefore, the trial could be conducted in any of the local jurisdiction that is Haldwani, Nainital, in the State of Uttaranchal, Lucknow or Unnao, within the State of Uttar Pradesh. But in the present case the case was registered at police Station, Haldwani, and the investigation started at Haldwani therefore the local jurisdiction to try the offence shall be at Haldwani/Nainital. If the investigation agency wants to prosecute or file a challan at Haldwani/Nainital Court, then District Nainital will have jurisdiction to try the matter. It is wrong to say that Additional Sessions Judge, Third Fast Track Court, Nainital has no jurisdiction. The view taken by the Additional Sessions Judge, Third Fast Track Court, Nainital is wrong and we set aside the same though High Court, has set aside but for wrong reasons. In this view of the matter, we are not

inclined to interfere with this matter. We dismiss the special leave petition and direct that Additional Sessions Judge, Nainital will have jurisdiction to try the offence.”

20. Thus it will be seen that in offence under section 364 – A of IPC, demand of ransom is also involved and in case, ransom is not made, then consequence which may even go to the extent of death of the person kidnapped who may not be the same person who has been taken by way of kidnap as has been shown in this case, but normally is a third person.

21. Similarly in another judgment delivered in the case of Anil alias Raju Namdev Patil Vs. Administration of Daman and Diu, Daman and another reported in (2006) 13 SCC 36, Hon'ble the Supreme Court has discussed and laid down the distinction between two offences i.e. offence under section 364 and 364-A of IPC. In para – 55 to 58 of the aforesaid judgment, distinction has been laid down. The said paragraphs are reproduced hereunder for the sake of reference.

“55. The ingredients for commission of offence under Section 364 and 364-A are different. Whereas the intention to kidnap in order that he may be murdered or may be so disposed of as to be put in danger as murder satisfies the requirements of Section 364 of the Indian Penal Code, for obtaining a conviction for commission of an offence under Section

364-A thereof it is necessary to prove that not only such kidnapping or abetment has taken place but thereafter the accused threatened to cause death or hurt to such person or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt or causes hurt or death to such person in order to compel the government or any foreign State or international intergovernmental organization or any other person to do or abstain from doing any act or to pay a ransom.

56. It was, thus, obligatory on the part of the learned Sessions Judge, Daman to frame a charge which would answer the description of the offence envisaged under Section 364-A of the Indian Penal Code. It may be true that the kidnapping was done with a view to get ransom but the same should have been put to the appellant while framing a charge. The prejudice to the appellant is apparent as the ingredients of a higher offence had not been put to him while framing any charge.

58. We, therefore, are of the opinion that the appellant could not have been convicted under Section 364-A of the Act. We, however, find him guilty of commission of an offence under Section 364 of the Indian Penal Code. He, in our opinion, deserves the highest punishment prescribed therein, i.e., the rigorous imprisonment for life and we direct accordingly. The appeal is dismissed with the modification of sentence as also

quantum thereof.”

22. In the present case also, while kidnapping involved, threat perception was also there but demand of ransome was not there. Applying the principles laid down in the aforesaid judgment to the facts of this case, we have no hesitation to hold that in this case, there was no issue of demand of ransom as is required under section 364-A of IPC and therefore, in this case it cannot be said that the offence under section 364-A of IPC is made out. Thus the conviction of the appellant is converted to conviction under section 364 of IPC. The appellants are already in jail for a period of more than 8 years. Considering the totality of the facts and also keeping in view that the prosecution has not been able to establish that the money had been transferred to the complainant or that the complainant has come to the pressure build up upon him, we reduce the sentence awarded to the appellants already undergone.

C.c. as per rules.

(Shantanu Kemkar)
Judge

(M.C. Garg)
Judge