
(2010) 03 PAT CK 0067

In the Patna High Court

Birbal Choudhary @ Mukhiya Jee and Others

APPELLANT

Vs

The State of Bihar
 The State of Bihar Vs Krishna
Bihari Singh @ Krishna Singh and Jawahar Koiry @ Jawahar
Singh @ Netaji

RESPONDENT

Date of Decision : 30-03-2010

Acts Referred:

Citation : (2010) 03 PAT CK 0067

Final Decision : Dismissed

Judgement

Navin Sinha, J.—The appellants have been variously convicted under Sections 364A, 34, 395 & 412 of the Indian Penal Code (hereinafter referred to as I. P. C.) as discussed in detail while considering their individual cases hereinafter. The appellants in Criminal Appeal Nos. 716 and 761 of 2008 have been sentenced to death giving rise to the Death Reference. The appellants in the remaining appeals have been sentenced to undergo imprisonment for life and rigorous imprisonment for ten years. All the appellants have been acquitted of the charge u/s 120B I.P.C.

2. The written report of Arun Kumar Mishra, P.W. 5, was lodged with the Officer Incharge, Rajpur Police Station on 21.11.2006 at 10 P.M. marked as Exhibit-1, and formal F.I.R. registered at the same time. It was sent to the Magistrate on 22.11.2006. The informant stated that he was engaged in the business of cement, iron and dealership of Hindustan Lever along with his cousin Ajay Shankar Mishra, P.W. 17. The business was spread between Buxar and Ramgarh. P.W. 17 was responsible for collection of money dues from business associates in the Ramgarh area and travelled frequently for the purpose. On 20.11.2006, P.W. 17, and the informant's cousin Raju Mishra, P.W. 20, with the driver Manoj Singh, P.W. 18, left Buxar at about 10 A.M. on his white Gypsy bearing No. BR ID 2619, for Ramgarh and other places to collect money dues. P.W. 17 collected such dues from business associates at Nuao, Rajesh Jaiswal, P.W. 2, Sandeep Kumar Jaiswal, P.W. 3, Parweej Ansari, P.W. 4, and Santosh. At Ramgarh they collected dues from Sanjay Jaiswal, P.W. 1 and others. With the total collection of

about Rupees four lacs they proceeded for Buxar at about 3.30 P.M. and telephonically informed him that they did not propose to stop anywhere. A repeat conversation at 4.30 confirmed that they had reached Rampur. There was no contact thereafter and neither did they reach home. The next whole day was spent searching for them. Birendra Singh, P.W. 6, a businessman of Tiara informed him that the previous evening at about 6 P.M. the Maruti Gypsy was seen on the canal road from Rampur to Jamauli proceeding towards Jamauli driven by another. It was preceded by a black Hero Honda Motorcycle motorcycle, followed by a silver coloured Bolero with dark glasses and a Bajaj Discover Motorcycle behind it. P.W. 18 called from Sonbarsa next day at about 8.45 P.M. that P.W. 17 and P.W. 20 had been abducted by seven unknown persons on the point of arms at about 5 P.M. near Rampur village on the Hadhadva bridge after they were intercepted by motorcycles and he had been released near Sonbarsa. The informant was convinced that the abduction was for ransom.

3. Learned Senior Counsel, Sri Kanhaiya Prasad Singh on behalf of the appellant Birbal Choudhary in Criminal Appeal No. 648 of 2008 submitted that P.W. 18 did not identify him in the first Test Identification Parade (hereinafter referred to as T. I. P.) on 11.12.2006. Only in a repeat T.I.P. held on 14.12.2006 he was identified when again in the dock the witness did not identify. Even P.W. 17, who identified accused Shyam Bihari Paswan, Angad Koeri, Krishna Bihari Singh and Jawahar Koeri did not identify him. P.W. 20, another victim denied having named the appellant during investigation. The identification of the appellant was, therefore, not confirmed and he was entitled to acquittal.

4. Sri Yogendra Kumar, Advocate in Cr. Appeal No. 851 of 2008 for appellant Angad Koeri submitted that there is a single identification during T.I.P. by P.W. 17. He acknowledged that the defence of a scar injury over the left eye and non-compliance with requirement for T.I.P. thereunder were issues which had not been raised before the Trial Court at any stage or in the cross-examination of P.W.9, the Judicial Magistrate, who held it. The next submission was that there is no specific role attributed to him except for sitting on a motorcycle at the time of abduction. The petitioner was a member of the mob and could not be assigned the same status of an accused, who took a more active participation in the entire episode.

5. Smt. Kanak Verma, Advocate, in Cr. Appeal No. 956 of 2008 on behalf of appellant Harivansh Ram submitted that co-accused Jawahar Choudhary named the son of the appellant, Radhey Shyam, as an accomplice and the Police referred to the appellant only in context of his status as father of Radhey Shyam and implicated him for the misdeeds of his son. He had been acquitted of the charge u/s 412 I.P.C. with regard to the Hero Honda Motorcycle recovered from his house as the same belonged to co-accused Krishna Bihari Singh. Charge was framed against the appellant u/s 368 of the Indian Penal Code but he has been convicted u/s 364A of the same, when no such accusation was explained to him

u/s 313 Cr.P.C. This vitiates his entire trial.

6. Mr. Shakeel Ahmad Khan, Sr. Advocate in Cr. Appeal 761 of 2008 and 901 of 2008 on behalf of appellants Jawahar Koeri and Ram Briksha Koeri, Hirdya Koeri, Mangal Singh Saroj Singh submitted that P.W. 18 was the first reliable evidence for identification. He does not identify the appellants even in the dock, which rules out their participation in the occurrence. Jawahar Koeri was arrested in the market place but search and seizure of the ring of P.W. 17 was made only at the Police Station. False implication and concoction at the Police Station by implanting evidence cannot be ruled out.

7. It was next submitted that the identification of the single storeyed white coloured house at village Simri as belonging to the appellant Jawahar Koery , and where the three victims were allegedly kept on the first night is not free from doubt. P.W. 18 rendering the first account of the occurrence, which shall take precedence over the later rendition by P.W. 17, only states that they were kept in a house at night. The house has not been shown to the Police and there is nothing to suggest that the victims were kept in the house of the appellant. Likewise, P.W. 20 does not state anything about the place of stay much less about the house of the appellant. The alleged identification of the appellant by P.W. 17 for the first time in the Court is too vague and too weak to be relied upon after over ten months of the occurrence when P.W. 18 & 20 were kept in confinement in the same house but say nothing on his identification. The alleged identification by P.W. 17 is nothing but the mere act of a site plan drawn up by the Police recording the statement of P.W. 17 without actually visiting the places of stay as allegedly disclosed.

8. On the issue of the test identification parade of the ring belonging to P.W. 17, marked as exhibit-5/2, it was submitted that the appellant was arrested on 10.7.2007 and the T.I.P. held only on 21.7.2007. The delay makes the possibility of the ring kept at the Police Station having been shown to P.W. 17 earlier, a distinct possibility. The evidence of P.W. 14, who conducted the T.I.P. makes it apparent that the ring was displayed, P.W. 17 came first to the Police Station and P.W. 14 followed thereafter. P.W. 18 & 20 were not associated with the T.I.P. All this makes the T.I.P. invalid in law. The belated identification of the appellant in the dock on 27.11.2007, when he was present the previous day also and much after his arrest on 10.7.2007 vitiates the identification in absence of having put the appellant on T.I.P. Reliance was placed on Chonampara Chellappan and Others Vs. State of Kerala, , Kanan and Others Vs. State of Kerala, , State of Maharashtra Vs. Sukhdeo Singh and another Vs. State of Maharashtra Through C.B.I. Vs. Sukhdev Singh alias Sukha and others, , Bollavaram Pedda Narsi Reddy and others Vs. State of Andhra Pradesh, .

9. On the recovery of the black Hero Honda motorcycle from the house of co-accused Harivansh Ram, on the disclosure made by the appellant , it was submitted that there is no material to suggest that it was actually the same motorcycle used in the alleged occurrence. Reliance was placed on Mohamed

Inayatullah Vs. The State of Maharashtra, . It was submitted that the confession of the appellant as disclosed by P.W. 19 has to be read as a whole and, therefore, any disclosure by the appellant of the place of stay during the abduction being a composite confession of the occurrence was not admissible in evidence in its entirety.

10. The appellants Ram Briksha Koery, Hirdaya Koery, were arrested on 10.12.2006 as the were allegedly seeing running away from the house of accused Jawahar Koery, where the three victims were kept on the first night. Yet, P.W. 18, who was freed on the second day, does not identify them. Likewise, appellants Mangala Singh and Saroj Singh were witnesses to the execution of distress warrants of appellant Jawahar Koery on 5.12.2006. They were not taken into custody on that day. No evidence has transpired for their arrest five days later on 10.12.2006. There is no substantive evidence against them. There has been no T.I. P. and neither have they been identified in the dock.

11. Learned Senior Counsel, Sri Krishna Prasad Singh appearing for the appellant, Krishna Bihari Singh @ Krishna Singh in Cr. Appeal No. 716 of 2008 submitted that the involvement of the appellant in the occurrence was limited till he parted ways with Rs. 1.50 lacs of money after five hours of the abduction which at best may make out an offense u/s 395 of the Penal Code. The appellant had no concern with the subsequent confinement of the victims or other acts of the abductors. The appellant surrendered on 28.11.2006 and was remanded to Police custody for approximately 8 days on 29.11.2006 but never put on T.I.P. even though some other accused were put on T.I.P. thereafter. There is no explanation for the same, and, therefore, the belated identification in the dock on the second day of appearance, stands vitiated. Much emphasis was laid on the statement of P.W. 17 at paragraph 33 of his evidence to submit that the witness has stated that the appellant was not present at the time of occurrence. It was obligatory on part of the Investigating Officer to explain why T.I.P. of the accused was not done when he was on Police remand for several days. Reliance was also placed on Kanan and Others Vs. State of Kerala, .

12. The Bolero was not seized from the house of the appellant but from the road in front where it was parked. There was no material to demonstrate that the Bolero belonged to the appellant. The ownership and recovery was thrust upon the appellant. The money packet recovered from the house of the appellant did not tally in content with the denominations in each packet as given by P.Ws. 1 to 4 in payment reflective of the fact that it was not the same money which was recovered. None of the two bundles recovered bore the writing "Ansari Nuao" .P.W. 22 states of signing of seizure list at the Police Station. The alleged recoveries were, therefore, fake. The Remo rifle was a licensed weapon of the appellant. There is no material to suggest that the other Bolero vehicles identified during T.I.P. by P.W. 18 also had red seat cover. The belated identification of the vehicle in Court by P.W. 17 was not in accordance with law.

13. Learned Senior counsel, Sri Rana Pratap Singh for the appellant Shyam Bihari

Paswan in Criminal Appeal No. 809 of 2008 submitted that the entire genesis of the case for implication of the appellants was shrouded in a maze of false implication by creation of evidence. On 23.11.2006 there was no evidence before the Police. Yet alleged recovery of the Bolero vehicle, money and licensed rifle of appellant Krishna Bihari Singh was made from his residence as related to the offence. On that date P.W. 18 was the only competent witness and had made no disclosures to warrant such search and seizure. The money packet was allegedly identified by "Ansari Nuao" written on it. P.W. 4, Parwez Ansari was not examined on this writing and neither has it been proved whose writing it was. The money allegedly seized and the rifle was not properly sealed and opened at the T.I.P. as acknowledged by P.W. 15, who conducted the same. Tampering with the money as evidence, therefore, could not be ruled out. There was no evidence that the money seized was the very money snatched from the victims. Reliance was placed on Jasbir Singh Vs. State of Punjab, .

14. The confessional statement of appellant Jawahar Koery in Criminal Appeal No. 761 of 2008, exhibit-9, made on 10.7.2007 was not the basis for the alleged recoveries and its admissibility was limited to the extent permissible u/s 27 of the Evidence Act. Reliance was placed on (2008) 2 SCC (Cri) 264.

15. The appellant Shyam Bihari Paswan surrendered on 18.12.2006 and was remanded to Police custody ending on 26.12.2006. The T.I.P. was held only on 5.2.2007. The appellant was photographed and moved from one village to another. He wrote to the Human Rights Commission, exhibit-F/2 and also stated so in evidence as D.W. 9. He repeated the same in his statement under 313 Cr.P.C. The appellant had a black mole on his face. The requirements for a T.I.P. by either hiding the same or giving similar mark on others was not followed. In this background, the identification of the appellant by his name, and not his face, by P.W. 17, vitiates the entire T.I.P. Relying on 1981 PLJR 462 (Vakil Singh v. State of Bihar), it was submitted that in a case of single identification, in an otherwise illegal T.I.P. there was no other evidence forthcoming against the appellant. P.W. 17, in Court, at paragraph 33 of his deposition stated that he recognises none of the accused present in Court, but subsequently identified four including the appellant. He has not been identified by the other two victims, P.Ws. 18 & 20. Reliance was placed on Dana Yadav @ Dahu and Others Vs. State of Bihar, and Mahabir Vs. The State of Delhi, for the proposition of delayed identification in the dock in the background of an invalid T.I.P.

16. Learned Counsel Sri Kailash Bihari Verma appearing on behalf of the appellant Ramashraya Koery in Cr. Appeal No. 773 of 2008 submitted that allegedly the victims on the second day were kept in a house in village Dilhuva, P.S. Dinar. The appellant has been falsely implicated as he happened to be a resident of the same village. P.Ws. 17 & 20, the two victims have neither named the appellant nor identified him in the Court or his house. The appellant was never put on T.I. Parade. The only material against the appellant was the alleged confession before the Police of co-accused Krishna Bihari Singh dated 29.11.2006

leading to the Police raid long before the victims are stated to have been released on 11.1.2007. Co-accused Birbal Choudhary allegedly confessed before the Police that the victims had been kept at village Dilhuva without any identification of the appellant or his house. Accused Shyam Bihari Paswan had only stated before the Police that two of the accused had stayed at the house of the appellant, there was no reference to the victim being present. The appellant was arrested on aforesaid basis from his house on 20.12.2006. The appellant in his confession before the Police never stated that the victims stayed in his house. The only tangible material was the confession before the Police by accused Jawahar Koery that the victims were kept in the house of the appellant and Ram Darash Koery (Criminal Appeal 910 of 2008). This confession of accused Jawahar Koery, exhibit-9, was recorded in presence of P.W. 13, Abdul Hamid, the Circle Officer, but, the confession was not in compliance with Section 164 Cr.P.C. and, therefore, not admissible. Reliance was placed on *Zwinglee Ariel Vs. State of Madhya Pradesh*, . Relying upon *Hari Charan Kurmi and Jogia Hajam Vs. State of Bihar*, , it was submitted that mere confession of a co-accused without substantive evidence could not be the basis for conviction.

17. Learned Counsel Sri Sanjay Singh, for the appellant - Ram Darash Koery in Criminal Appeal 910 of 2008 made similar submissions as on behalf of appellant Ramashraya Koery

18. Learned Counsel on behalf of the appellants sentenced to death submitted death sentence could be imposed if death ensued during abduction or confinement both being at par. Life imprisonment is an alternative punishment. The present case on facts was a fit case for punishment of life imprisonment. No special features were attributed to the two appellants. They were only one of the many abductors. The conduct of the two appellants shows that they had no intention, willingness or depravity to cause death for obtaining ransom. They intended to release the victims on payment of ransom but released them without such payment. It was not even a case to enhance their imprisonment beyond a period of 14 years. Reliance was placed on *Nazir Khan and Others Vs. State of Delhi*, in support of the proposition. Relying upon 2008 (4) PLJR 122 (SC) *Swamy Shraddananda v. State of Karnataka*, *Nazir Khan and Others Vs. State of Delhi*, for the propositions that death sentence was to be awarded only in the rarest of rare cases, which was not the case presently. On behalf of those sentenced to life imprisonment, it was submitted that life imprisonment as understood for a term of 14 years was sufficient punishment. The facts and circumstances of the case did not warrant the imposition of any enhanced punishment beyond 14 years, judicially interpreted as either 20 years or for the entire life. In fact, given their individual roles some of them should have been awarded a lesser punishment of ten years only u/s 364 of the Penal Code.

19. Learned Senior counsel, Sri Lala Kailash Bihari Prasad appearing on behalf of the State submitted that the present was a case of planned premeditated abduction when the appellants lay in wait for the victims. Individual overt acts

were, therefore, not relevant and the conviction was sustainable under the separate offences read with Section 34 of the Penal Code. P.W. 6, being declared hostile is inconsequential. The witness has identified the Gypsy driven by P.W. 17. The abduction took place at 4 P.M. The witness at 4.30 P.M. saw a motorcycle, followed by the Gypsy driven by another, being followed by a Bolero in turn followed by another motorcycle. The witness has confirmed the sequence of events regarding the abduction corroborated by the victim P.W. 17 including the manner and direction of movement narrated by P.W. 17 in paragraph 9 of his deposition. The witness was also a local businessman and, therefore, naturally in the interest of his own safety declined to corroborate his statements before the Police of identification by evasive answers, and not denials. The identity of the vehicle of the abductors, a Bolero is not denied.

20. The appellant Krishna Bihari Singh was unable to explain the recovery of Rs. 1.50 lacs from his house and contradicted himself in his statement under 313 Cr.P.C. by first stating that it was money withdrawn on his wife's credit card and subsequently said that it was income from his Chimni business. This corroborates the allegations of his involvement and that the recovered money belonged to the persons abducted. P.W. 17 was kept in captivity for 52 days. Reliance was placed on Raman Bhai Naran Bhai Patel and Others Vs. State of Gujarat, for the proposition that the identification of the accused "was imprinted in the mind" and absence of T.I.P. was not relevant in support of the identification made in the dock of some of the accused. Reliance was also placed on S. N. Dube Vs. N. B. Bhoir and Others,

21. The recovery and identification in T.I.P. of the money, along with the news paper packet in which it was kept with "Nuao Ansari written on it as also the identification of the Bolero in which the victims were taken after abduction were all corroborative evidence linked to the crime. P.W. 17 was a thoroughly reliable witness as in his deposition he completed relived the evidence in lucid detail from the stage of abduction to the date of release. Reliance was placed on Principal, Kendriya Vidyalaya and Others Vs. Saurabh Chaudhary and Others, to justify the conviction and sentence u/s 364A.

22. Sri Akhileshwar Prasad Singh, learned Counsel for the informant assisting the arguments of the prosecution submitted that from a conjoint reading of the evidence of the first and second Investigating Officers, P.W. 8 & 19 read with that of the victims P.W. 17 and 18 reveals that the victims during abduction were kept in the house of appellant Jawahar Koery @ Netaji at village Simri, shifted to village Bhanpur and then to Ganjbharsara where they were kept in the house of appellant Birbal Chaudhary @ Mukhiya Ji. They were then moved to village Dilhuva, Bhabhni and Baradih. P.W. 8 had confirmed from the mobile conversations of the accused as reported by Bharat Sanchar Nigam Limited (hereinafter referred to as BSNL) that all these villages fell under the location of one mobile tower identified as Kochas A. The place of abduction, Hadhadwa Bridge near Nuaon also fell within the same.

23. Accused Birbal Chaudhary had clearly been identified by P.W. 17. On 27.11.2007, P.W. 17 clearly stated that while the other accused were present in Court, Birbal Chaudhary was not present. This was indicative of positive identification of the appellant by P.W. 17. On 28.11.2007 the appellant was present in Court when P.W.17. identified having been kept in the appellants house as the Mukhia of Ganjbharsara. The appellant did not dispute the identification or cross examine. The contradiction urged in his complexion as wheatish by P.W. 18 and fair by P.W. 17 was irrelevant in the Indian context. The witness had generally stated that the accused appeared to be having somewhat Nepali features and not that he had positive Nepali features. In his several petitions u/s 317 Cr.P.C. he clearly represented himself as Birbal Chaudhary @ Mukhiya Ji.

24. Appellant Jawahar Koery himself disclosed his identity to P.W.5, the informant, in his first conversation with the aid of the simcard mobile number 9430929934 belonging to his employee Rinku sent for establishing contact with the abductors. The identification of his house where the victims were kept on the first night in village Simri by P.W. 17 & 18 has been corroborated by P.W. 8 & 19 confirmed by similarity of location and geographical land marks. His identification in the dock was positive and absence of earlier T.I. Parade was not relevant in the facts and circumstances of the case. Not only was the appellant present in the Bolero at the time of abduction, he had also asked P.W. 17 to write a letter to his family members for payment of ransom but also took his ring as a ruse to convince his family members the factum of his being alive and in confinement. P.W. 17, therefore, had adequate opportunity for his positive identification. The ring of P.W. 17 was recovered from the appellant identified in T.I.P. before P.W. 14 along with the motorcycle the appellant was riding at the time of abduction as contained at exhibit-5 series. The motorcycle was recovered from the house of appellant Hari Bansh Ram on his confession.

25. Appellant Shyam Bihari Paswan was identified by P.W. 17 both in the T.I.P. and in the dock by the mole on his left cheek. He was taken into custody on 18.12.2006. The first T.I.P. of another was held on 14.12.2006. The appellant was on Police remand only till 26.12.2006. The victims were released on 11.1.2007 and T.I.P. held on 5.2.2007. There was, thus, no occasion for the appellant being shown earlier to P.W. 17 so as to vitiate the T.I.P. Appellant Angad Koery was identified in the T.I.P. before P.W. 9 as also in the dock.

26. With regard to accused Krishna Bihari Singh, it was submitted that the Bolero in which abduction was done belonged to him and was being driven by him. P.W. 17 had stated that another accused addressed as Verma Ji handed over two of the money packets to this appellant who then went away. It was this appellant, who had drawn a double barrel rifle at the time of abduction. The Bolero was seized from his residence identified in T.I.P. by P.W. 18 before P.W. 15 by its red seat cover, as also by P.W. 17 in Court by the same seat cover. P.W. 18 identified in T.I.P. the two cash bundles wrapped in paper with the words "Ansari

Nuao" (the payment given by P.W. 4) and likewise identified the remo rifle of the appellant by its special features at the T.I.P. and also narrated in the deposition by him as also P.W. 17. That the appellants did not have their faces covered during the abduction has also been stated by P.W. 17. The victims were with the appellant in the Bolero from 4 P.M. when the abduction took place till approximately 9 P.M. when the victims were made to alight from the Bolero and asked to walk. P.W. 17 further identified the appellant on the 7th day of abduction as the very same person driving the Bolero holding a gun, when he came perturbed by the recovery of the Bolero, cash and rifle from his house and the arrest of his relatives on 22.11.2006. i.e. The 7th day of abduction. This was evidence of the appellant and the other co-accused being in continuous contact as also the repeated opportunity of the victims to identify him. The appellant surrendered on 28.11.2006. The Bolero was itself a vehicle stolen from Lucknow bearing a fake registration number which in reality was that of a two wheeler as deposed by P.W. 19 after verification from the Transport Authority in the State of Uttar Pradesh.

27. P. W. 17 & 20 were lastly kept in the house of accused Hari Bansh Ram in village Baradih. Not only did P.W. 17 show the places of captivity to P.W. 19, but by disclosure of accused Jawahar Koery admissible u/s 27 of the Evidence Act before P.W. 13 at the Rajpur P.S. the motorcycle of the son of Krishna Bihari Singh used in the abduction was recovered from his house, identified by P.W. 17 in T.I.P. in the presence of P.W. 14. The appellant was also recognized in the dock by P.W. 18.

28. The factual scenario of the planned logistics of the abduction after premeditation and design with smoothness of execution of a well planned operation are all factors relevant for imposition of appropriate sentence. The object was to extract ransom evident in the desperation by keeping the victims in confinement for 52 days. Appellant Krishna Bihari Singh was a well off person with a brick kiln as further evident from the description of his house, yet was driven by the insane greed of money at the expense and unconcern for others or the law. Reliance was also placed on Santosh Kumar Satishbhushan Bariyar Vs. State of Maharashtra, and State of Bihar Vs. Ashok Yadav and Another, for imposition of appropriate sentence to be determined in light of their actions. P. W.'s 8 and 19 had adequately deposed on the criminal antecedents of the appellants Krishna Bihari Singh and Jawahar Koery.

29. The common submission was the sentence of death was commensurate with the offence and in the interest of the society warranting no interference. Even if this Court were not to uphold death sentence of appellants, Krishna Bihari Singh and Jawahar Koery, surely the present was not a fit case for the sentence of life imprisonment commonly understood for a term of 14 years. Reliance was heavily placed on the judgment of the Supreme Court in 2008(4) PLJR (S.C.) Swami Sradhananda v. State of Karnataka and the directions given therein with regard to life imprisonment for a term in excess of 14 years would be the appropriate

punishment for all the accused and not only those sentenced to death.

30. P.W. 17, 18 & 20 were the victims of abduction. P.W. 17 and 20, businessmen and relatives of the informant, were released from captivity after 52 days on 11.1.2007., while P.W. 18, the driver was released on the next day of abduction at night. The distinction is too apparent. P.W. 18 was not worth the abduction for ransom.

31. P.Ws. 1 to 4 and 16 were persons variously situated at Ramgarh, Nuao Bazar and Rampur having business relations with the informant P.W. 5,. They have all consistently stated that on 20.11.2006 in between 12.30 to 2.30 P.M., P.Ws. 17, 18 & 20 had come to them in a white Gypsy for collecting money dues. P.W. 17 was driving while P.W. 18 was sitting by his side on the front seat. P.W. 20 sat on the back seat. The money paid was wrapped in a news paper and kept by P.W. 18 in a black bag . P.W. 1 paid Rs. 5500/- in a bundle of hundred rupee notes. P.W. 2 paid Rs. 1.5 lacs consisting of two bundles of Rs. 500/-, nine pieces of Rs. 1,000/- and three bundles of Rs. 100/- and the balance in Rs. 50/-. P.W. 3 paid Rs. 35,000/- in denominations of Rs. 100/- while P.W. 4 paid Rs. 1.4 lacs in two bundles of Rs. 500/- and four bundles of Rs. 100/-. P.W. 16 paid Rs. 15,000/- in denomination of Rs. 100/-. They later learnt, inter alia, on queries made by P.W. 5 that the aforesaid persons had been abducted on their way back to Buxar.

32. P.W. 5, the informant, stated that when P.Ws. 17, 18 & 20 did not return home by about 9 P.M. on 20.11.2006, he called on the mobile 9431027544 of P.W. 17. It was received by another who stated that "he was everybody's father". The mobile was switched off thereafter. P.W. 6 confirmed of having seen the caravan at 4:30. p.m. Of the black hero Honda motorcycle followed by the Gypsy being driven by another in turn followed by a Bolero and motorcycle. The abduction was confirmed by P.W. 18 after he was released at about 8.45 P.M., the next day near the Sonbarsa Petrol Pump. He had gone to the place of occurrence and confinement with the Police. P.W. 17 & 20 were released after 52 days at 5 A.M. on 11.1.2007. The Police took them to all the places identified by them where they had been abducted and kept during abduction. The Police drew up a location map on their information, which was duly exhibited. A mobile simcard phone No. 9430029994 belonging to his servant Rinku was sent to the abductors through a spy for establishing contact as proved by P.W. 2 1, Hare Ram Mishra and through which a demand for ransom of Rs. 50 lacs was made on the mobile of P.W. 21, 9934848065. P.W. 17 cried for help on the phone and asked to save them by securing their release. The accused disclosed their name over the phone as Jawahar Koeri and Suresh Koeri. The abductors had also sent a letter written by P.W. 17 signed by P.W. 20 for payment of ransom, which the witness identified marked as Exhibit-8 dated 22.11.2007. P.W. 18 had taken the Police to the place of occurrence and places where he was kept and where he was released.

33. P.W. 6, Birendra Singh, identified the white Gypsy by its number confirming seeing the same at 4:30 p.m. on the canal road on 20.11.2006 being driven by another preceded by a motorcycle followed by a Bolero and a motorcycle. The

witness thereafter turned hostile on the issue of identification stating that he was not willing to do so out of fear.

34. P.W. 17 deposing ten months later was consistent on the issue of monetary collections made by him during the day and the telephone conversation with P.W. 5. At about 4 P.M. they were intercepted by two motorcycles and a Bolero, abducted on the point of arms forcibly near the Hadhadva bridge on the canal road. One of the abductors was referred to as "Netaji" by his accomplices. One of them had a mole on the left cheek. One of them was tall, well built and bald in front with strands of white hair wearing a white kurta pajama. Another who was having a rifle was of average height, wheatish in complexion was addressed as "Babusaheb". He confirmed the phone call from P.W. 5 about 9 P.M. answered by one of the abductors. The Gypsy was being driven by abductor "Verma Ji", who gave two bundles of money to "Babusaheb" and told him to return. They victims were taken from one place to another, and from one house to another, inter alia of one Mukhiya Ji of village Ganj Bharsara, who was fair, well built, with a thin mustache with akin Nepali features. At times they were kept in the fields. The witness confirmed the telephone conversation and demand for ransom with P.W. 5 on a mobile connection sent by him to the abductors and proved as exhibit-8, the letter written by him while in abduction signed by P.W. 20 also, sent to P.W. 5. His ring and watch was taken away by "Netaji". They were released on 11.1.2007 at about midnight at an isolated place on the Kochas-Karhagar Road. They met the Police, who with them immediately proceeded on the Police jeep to all the places where P.W. 17 & 20 had been abducted and kept during their period of confinement and identified by them, raided by the Police. The location maps prepared by the Police were identified by him. He identified appellants Shyam Bihar Paswan and Angad Koeri in the Test Identification Parade. He also identified his gold ring and the black Hero Honda motorcycle having a blue strip bearing registration No. U P 60 F 8418 during during T.I P. marked exhibit 3/1 and exhibit "Z" respectively. He also the recognized in Court the rifle possessed by one of the accused during abduction as also the silver Bolero from its red velvet coloured seat bearing registration No. U P 60 F 8221. The accused "Babu Saheb" was identified by him in Court and disclosed his name as Krishna Bihari Singh."Netaji" likewise identified disclosed his name as Jawahar Koeri. The accused in a black jacket was identified as Haribansh Ram. He confirmed that at the time of abduction and throughout confinement the accused had not camouflaged their faces.

35. P.W. 18, likewise deposing one year later was consistent with P.W. 17 on the narration of abduction and mobile conversation at 9 P.M. He confirmed showing the Police the place of abduction and the place of confinement before release. The witness identified the rifle used during abduction and identified the Bolero by its velvet coloured seat as also one of the accused Birbal Chaudhary in T.I.P. but went hostile during the identification of the appellant in trial concerned of his own safety as very apparent from his statement at paragraph 13 of his cross-examination.

36. P.W. 20 also abducted with P.W. 17 deposing eleven months later was consistent on the abduction, the letter written by him and P.W. 17 sent through the abductors but went hostile on his statements made under Sections 161 Cr.P.C. for other purposes, when he stated clearly in paragraph 5 of his deposition, concerned about his own safety that he does not want to say anything more.

37. P.W. 21, father of P.W. 20 confirmed sending the mobile simcard to the abductors through a spy and the letter written by the victims, exhibit 8.

38. P.W. 7, the Officer Incharge, Iradi Police Station, proved the seizure of the Bolero Jeep, money and rifle from the house of accused Krishna Bihari Singh in presence of seizure list witness, P.W. 22, marked as Exhibit-3. P.W. 8 was the Officer Incharge on 21.11.2006 of Rajpur Police Station. He proved having gone from one place to another with P.W. 18, where the victims were kept before he alone was released. P.W. 18 identified to him the house at village Semri of accused Jawahar Koiry @ Neta Ji where the three victims were kept in the first night, thereafter moved to the house of Kamla Koeri and finally to the house of accused Birbal Choudhary @ Mukhiya jee at village Ganjbharsara. The Gypsy was recovered abandoned by him at N.H. 30 with the keys inside. He confirmed that the place of abduction Hadhadwa bridge was identified as Kochas-A in the mobile location of the B.S.N.L. Tower. The villages Mohanpur, Simri, Ganjbharsara, Basudeb Dingri, Dilhuva, Rehi, Sarna, Patwadih etc. fell under the mobile tower location Kochas-A. He handed over charge of investigation to P.W. 19 on 28.11.2006.

39. P.W. 9 was the Judicial Magistrate, holding T.I.P. who proved P.W. 18 identified accused Birbal Choudhary @ Mukhiya jee and P.W. 17 identified accused Shyam Bihari Paswan and Angad Choudhary.

40. P.W. 11 was the seizure list witness, exhibit-3/1, for recovery of the gold ring from appellant, Jawahar Koery, identified by its owner, P.W. 17. P.W. 13 proved the information given by accused Jawahar Koery after his arrest leading to the recovery of the black colour Hero Honda splendour Motorcycle bearing No. UP 60 F 8418 of the son of accused Krishna Singh from the house of accused Haribansh Ram. P.W. 14 conducted the T.I.P. for the gold ring and the motorcycle identified by P.W. 17, exhibit-5/2. P.W. 15 proved the T.I.P., when P.W. 18 identified the Bolero vehicle, cash and the Remo rifle.

41. P.W. 19 was the subsequent Officer Incharge of Rajpur Police Station, who confirmed from the mobile print out of P.W. 17 that they were in the tower location of Kochas-A at the time of abduction. During investigation on confirmation sought from the transport authority in Ballia the registration number on the Bolero UP60 YF 8221 was found to be fake as it was number allotted to a two Wheeler. The Bolero identified by its engine and chassis number was sold by M/S Deep Automobile, Azamgarh, U.P. And was reported stolen from Hazratganj, Lucknow on 26.6.2005 and its correct registration number before the

transport authority at Azamgarh was UP50 L 0336. The witness further confirmed the investigation made on basis of the mobile print outs through queries made from BSNL. He arrested accused Jawahar Koery and on disclosure made by the accused the motorcycle used in the abduction and the gold ring of P.W. 17 were recovered from the house of accused Harivansh Ram and the from the person of the former. He corroborated the evidence of P.W. 17 of having gone with him to the places of abduction and confinement after he was released as disclosed by P.W. 17., and carried out police raids.

42. Section 364A deals with "Kidnapping for ransom etc." 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 inter-governmental organization or any other person) to do or abstain from doing any act or to pay a ransom, shall be punishable with death, or imprisonment for life, and shall also be liable to fine.

43. The Section refers to both "Kidnapping" and "Abduction". Section 359 defines Kidnapping. As per the said provision there are two types of kidnapping i.e. (1) kidnapping from India; and (2) kidnapping from lawful guardianship. Abduction is defined in Section 362. The provision envisages two types of abduction i.e. (1) by force or by compulsion; and/or (2) inducement by deceitful means. The object of such force or compulsion must be the going of the victim from any place. The case at hand falls in the first category.

44. The offence of abduction is a continuing offence. Section 364A was amended in 1992 by Act XLII of 1993 with effect from 22-5- 1993 and it was subsequently amended in 1995 by Act XXIV of 1995 with effect from 26-5-1995. The Section provides punishment for kidnapping, abduction or detaining for ransom. To attract the provisions of Section 364A what is required to be proved is (1) that the accused kidnapped or abducted the person; and (2) kept him under detention after such kidnapping and abduction; and (3) that the kidnapping or abduction was for ransom.

45. To pay a ransom as per Black's Law Dictionary means "to pay price or demand for ransom". The word "demand" means "to claim as one's due"; "to require"; "to ask relief"; "to summon"; "to call in Court"; "An imperative request preferred by one person to another requiring the latter to do or yield something or to abstain from some act;" An asking with authority, claiming." The definition as pointed out above would show that the demand has to be communicated. It is an imperative request or a claim made.

46. The Apex Court while interpreting Section 364A in case Malleshi Vs. State of Karnataka, observed as under:

To attract the provisions of Section 364A 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.

The Apex Court while clarifying the demand of ransom, observed in the operative part of its judgment as under:

Ultimately the question to be decided is "what was the intention? Was it demand of ransom?" There can be no definite manner in which demand is to be made. Who pays the ransom is not the determinative fact.

What is relevant is the demand for ransom and not the actual payment of ransom.

47. The victims, P.Ws. 17 and 20 were businessmen out to collect their business dues. P.W. 18 was the Driver. It is established from the evidence of P.Ws. 1 to 4 and 16, that P.Ws. 17, 18 & 20 had visited them on 20.11.2006 for collecting money dues in between 12.30 P.M. to 2.30 P.M. That money totally valued at Rs. Four lacs had been collected in the denominations disclosed by the victim witnesses and was being carried by them when the abduction took place on their return journey home. P.W. 6, another businessman, stated to have gone hostile, has nonetheless fully corroborated the place and manner of occurrence as narrated by P.Ws. 17 and 18. The abduction is stated to have taken place on the bridge near the canal at 4 P.M. The witness saw the white Gypsy of the victims at 4.30 P.M. along with two motorcycles and a silver coloured Bolero in a caravan. He identified the Gypsy of P.W. 17, by its registration number, which was not being driven by P.W. 17, but by another. P.W. 17, P.W. 18 and 20 have consistently stated in their evidence of having been intercepted and accosted by the abductors who were traveling on two motorcycles and a silver coloured Bolero. The three victim witnesses are fully consistent on the mode, method and manner of abduction. P.W. 17 and 18 have also consistently stated that the abductors were armed with a rifle and pistol and that they took away the bag in which the collected money lay from P.W. 18 after the victims were pulled out from the Gypsy, jostled and forcibly pushed into the Bolero vehicle.

48. The abduction of the victims by certain unknown persons stands fully established. The first description of the alleged abductors figures in the deposition of P.W. 17. Photographically reliving the abduction, he recounts that the person sitting pillion on one of the motorcycles was referred to as "Netaji" by his accomplices. The pillion rider on the second motorcycle had a mole on his left cheek. Both these persons pulled out P.W. 17 & 18 respectively from the Gypsy. The latter snatched the money bag. Another, who got down from the Bolero and pulled out P.W. 20 and pushed him into the Bolero had a rifle in his hand. He further described that one of them was of stout built with a receding hair line and strands of white hair wearing Kurta Paijama. The person possessed of the rifle

was of fair complexion and average height referred to as " Babu Saheb" by his accomplices. P.W. 17 further stated that the accomplice referred to as "Verma ji" took out two packets of the money wrapped in newspaper bundles from the bag in which was kept and handed it over to the person driving the Bolero addressed as "Babu Saheb" and told him to return which he did along with the Gypsy driven by another. The abductor identified as "Netaji" while traveling in the Bolero when the mobile phone of P.W. 17 rang on a call from P.W. 5 stated that he was "the father of all" and disconnected the number. This parting, after which the victims were made to walk took place at about 9 P.M. Having remained closeted with the abductors for approximately five hours in the vehicle they had ample opportunity to identify the features and facial of the accused. This, to the Court, is a perfectly natural conduct and lends great credibility to their evidence and identification. The trauma and agony of the victims surely led to the identification and features of the abductors being etched in the minds of the victims in the form of an imprint when they stated that they could clearly identify them.

49. P.W. 18 was released on the next night of 21.11.2006 near the Sonbarsa Petrol Pump and is an affirming witness fully corroborating P.W. 17 in material particulars for the for the mode and manner and stay in confinement at village Simri on the first night. On his release, he stated to have gone along with the Police and shown them the place of abduction and the place where he was kept in confinement and was finally released. This finds corroboration in the evidence of P.W.8, the first investigating officer.

50. P.W. 17 has given a graphic description of the places where he and P.W. 20 were kept during their confinement for approximately 52 days by geographical description including identifying land marks corroborated and confirmed by P.W. 19 during Police investigation.

51. Exhibit-8 dated 27.11.2007 is the letter written by P.W. 17 during confinement signed by P.W. 20 also asking P.W. 5 to pay up the ransom amount and secure their release. The demand for ransom stands established from the conversation between P.W. 5, when the accused Jawahar Koery and Suresh Koery identified themselves calling from the mobile phone number 9430029994, sent , to establish contact with the abductors and made the demand for a ransom of fifty lacs and further stated that they were sending the ring of P.W. 17 and a letter from them (exhibit-8) in proof of their confinement to claim ransom. Exhibit-8 stated that P.W. 5 should at the earliest arrange to have them released. The mobile forensic evidence brought on record during investigation by necessary reports from the telephone authorities in the manner provided for in Section 63(b) of the Evidence Act of the conversation on 28.11.2006 of a call made from the aforesaid number shows that a call was made from it on mobile No. 9934848065 of P.W.2 1, clearly proves that a demand for ransom was in fact made. Even otherwise, it is not the defence of the appellants that there existed any enmity between the victims and the appellants for false implication. Once

the abduction has been established, surely the abductors did not do so in such planned organized manner with smooth flawlessness discussed, to play hide and seek games or only to scare the victims out of a business dispute or for any other reason to force them to desist from a particular course of action. An act of abduction in the present manner is the result of meticulous planning of the logistics with separate roles assigned to the individual players. The demand for ransom, therefore, clearly stands established. That it was actually paid or not is irrelevant.

APPELLANT KRISHNA BIHARI SINGH @ BABU SAHEB

52. The Appellant stands convicted u/s 364A/34, 395 and 412 I.P.C. and sentenced to death. P.W. 17 states, after the abductors intercepted the Gypsy, the person driving the Bolero stepped out carrying a rifle and who was addressed by his accomplices as "Babu Saheb." The accused referred to as "Verma ji" by his accomplices took out two packets of money wrapped in a news paper and handed it to the person driving the Bolero who then drove away at about 9 P.M. On the 7th day of the abduction, the person driving the Bolero possessed with a rifle had come on a motorcycle along with accused who had a mole on his face (accused Shyam Bihari Paswan) that his house had been raided, family members arrested, and the Bolero vehicle, money and his rifle seized. The victims were abducted at 4 P.M. and remained with him in the Bolero till 9 P.M. They therefore had adequate opportunity to see the accused and it can safely be said that their picture got etched or imprinted in the minds of the victim in the confines of the car during this five hours. The witness further stated that the accused did not have their faces covered during the incident. P.W. 17 identified this appellant in the dock by his identification of "Babu Saheb", referred during abduction by his accomplices. The accused then disclosed his name as Krishna Bihari Singh. This was a perfectly natural and reliable identification being made by P.W. 17 when he was vividly reliving the abduction drama in his mind by a photographic regeneration. That the appellant was not put on T.I.P. but was identified in the dock for the first time 10 months after release from abduction is of no relevance in the facts of the present case. Likewise, the absence of his identification by P.W. 18 or 20 is also not material to the prosecution case as it is not the number of witnesses but the issue of the credibility of the sole witness, in which lies the test. T.I.P., is more appropriate where the victim may have had only a glimpse of the unknown accused and there may be no particular reasons to remember him. The T.I.P. of such an accused has been considered proper only as an aid that the investigation was proceeding in the right direction. Such identification is not substantive evidence in itself but is only corroborative. In the facts of the case as discussed above, this Court finds no infirmity in the first identification of the appellant in the dock. The Bolero vehicle used in the abduction was recovered from the house of the appellant. Whether it was recovered from the boundaries of his premises or parked on the road in front of his house with houses on both sides of the road is hardly relevant and does not make out a defence of lack of his ownership of the same. Both P.W. 17 & 18 in

their evidence have clearly identified the silver coloured Bolero by its red colour velvet seat cover in the Court and test identification parade respectively. The two packets of cash wrapped in the news paper given to the appellant by his accomplices while parting ways containing a total of one lac fifty thousand with the words "Ansari Nuao" written on it, was the money given by P.W. 4 to P.W. 17 kept in the black bag by P.W. 18. It has been stated by P.W. 17, that the money was wrapped in news paper before handing it over to P.W. 18 who then kept it in the black bag. The appellant in his statements u/s 313 Cr.P.C. first stated that it was money withdrawn on the credit card in the name of his wife, and later stated that it was his income from his Chimni business. His bank pass book produced in defence did not show withdrawals of the nature claimed during the period in question to justify his claim for source of the money. The vacillating stand of the appellant himself leaves this Court satisfied that he was not telling the truth. Both P.W. 17 & 18 also recognized the rifle carried by the appellant based on the features of the rifle narrated by them in the T.I.P. and in the Court respectively. This seizure was effected from the house of the appellant and turned out to be a licensed weapon in his name. Last but not the least, the Bolero turned out to be a stolen vehicle from Uttar Pradesh bearing a fake registration number originally allotted to a two wheeler. Events that speak for themselves about the dispensation of the appellant. This Court, therefore, holds in light of the aforesaid discussion that the identification and involvements of the appellant in the abduction and confinement clearly stands proved. The recovery of the aforesaid items by the Police on information furnished to it during investigation, identified in the T.I.P. was evidence admissible u/s 27 of the Evidence Act.

Jawahar Koery @ NetaJ.

53. The Appellant stands convicted u/s 364A/34, 395 and 412 I.P.C. and sentenced to death. P.W. 5 has deposed that he sent a mobile phone bearing number 94309029934 of his employee Rinku to the appellant for establishing contact. The abductors disclosed their name as Jawahar Koery and Suresh Koery over the phone while demanding the ransom amount, when the witness also spoke to P.W. 17 and 20 who cried and asked to take necessary steps to secure their release. P.W. 5 has stated that the appellant said that he would send the watch and ring as proof of custody of the victims by the abductors. The mobile forensics of the print outs of this phone number procured from the B.S.N.L authorities admissible in evidence u/s 63(b) of the Evidence Act shows that there was a conversation between this number and mobile no 9934848065 on 28.12.2006 when the former was in possession of the accused. It was on 27.11.2007 that P.W. 17 wrote the letter, Exhibit-8, to secure their release. P.W. 17 deposed that the appellant took his gold ring on the pretext of sending it to P.W. 5. The appellant was apprehended in the market place. He does not have clear antecedents as stated by P.W. 19. This Court finds no infirmity in the actions of the Police in not carrying out any physical search of his person at the Tiara Bazar. Obviously, the Police apprehended law and problem, if it did so, a phenomenon which unfortunately is gaining ground in this State when the

accused are arrested in their own jurisdiction where they have clout and are freed by a mob. The ring of P.W. 17 has been recovered from him as soon as he was brought to the Police station, identified in T.I.P. by P.W. 17. On his disclosure the motorcycle used in the abduction belonging to the son of the appellant Krishna Bihari Singh was recovered from the house of appellant Hari Bansh Ram identified by P.W. 17 and proved by P.W. 13, Abdul Hamid, the Circle officer. The appellant was identified in the dock by P.W. 17 as "Netaji" when he disclosed his name as Jawahar Koery. The very reasoning discussed above for a first physical identification in Court, absence of earlier T.I.P. with regard to appellant Krishna Bihar Singh applies with equal force to the present appellant also and the Court does not consider it necessary to reiterate the reasoning's all over again. P.W. 17 stated that at the time of abduction, an abductor was referred to as "Netaji" by his accomplices. When the mobile phone of P.W. 17 bearing No. 94310 27544 rang on a call from P.W. 5 at 9 P.M. while they were inside the Bolero, this "Neta ji" took the mobile phone and answered "that he was everybody's father", and disconnected the phone. This phone call has been proved by evidence from the B.S.N.L. Authorities admissible u/s 63(b) of the evidence act to have been made. After the victims were made to get down from the Bolero and it was driven away, "Netaji" walked with them and told the others that the victims shall stay at his house for the night. Evidence has transpired that it was his house at village Simri and they had dinner there from where they moved to village Manpur in house of one "Gupta ji". This Court has, therefore, no hesitation in holding that the identity and involvement of the appellant in the abduction and confinement of the victims stands fully established also. He has also stated in his confession that it had come to their knowledge that the "Mishra Bandhu" of Buxar always came to Nuao and Ramgarh to realise money dues from retailers and which is admissible in evidence u/s 27 of the Evidence Act. The diary recovered from the possession of this appellant contained a telephone number in coded alphabetic identity which he decoded as 9430896559 and revealed as belonging to the accused Krishna Bihari Singh given for use to accused nick named Vermaji who died during trial.

54. The effect of first identification in dock after passage of some time, when the accused were unknown has no invariable rule but depends on the peculiar facts of each case. In the case of State of Maharashtra Vs. Sukhdeo Singh and another Vs. State of Maharashtra Through C.B.I. Vs. Sukhdev Singh alias Sukha and others, relied upon it has been held at paragraph 25 that a first identification in Court after a lapse of considerable time in case of total strangers cannot be relied upon when the witness had only a fleeting glimpse of the person identified or had no particular reason to remember the person concerned. There can be no doubt that both these principles apply with great force in favour of the prosecution in the present case. In the case of Raman Bhai Naran Bhai Patel and Others Vs. State of Gujarat, relied upon it was held at paragraph 20 that whether the absence of a test identification parade makes the identification in the dock inadmissible or useless and whether such identification deserves credence

depends on the facts and circumstances of each case. Great emphasis was laid on the facts that the identification in dock was made by eye-witnesses who were seriously injured and would have easily seen the faces of the persons assaulting them and their appearance and identity would well remain imprinted in their minds especially when they were assaulted in broad day light. No one would be more interested in naming the real culprits rather than implicate others falsely. In *S. N. Dube Vs. N. B. Bhoir and Others*, , in the facts of the case it was held that the infirmity in the identification during trial in the dock in absence of an earlier T.I.P. cannot diminish the evidenciary value of the identification on facts when corroborative evidence from other witnesses and confessions admissible in law was available. In *Dana Yadav @ Dahu and Others Vs. State of Bihar*, analyzing the law on this aspect at paragraph 38 of the judgment it was held as follows:

38. In view of the law analysed above, we conclude thus:

(a) If an accused is well known to the prosecution witnesses from before, no test identification parade is called for and it would be meaningless and sheer waste of public time to hold the same.

(b) In cases where according to the prosecution the accused is known to the prosecution witnesses from before, but the said fact is denied by him and he challenges his identity by the prosecution witnesses by filing a petition for holding test identification parade, a Court while dealing with such a prayer, should consider without holding a mini inquiry as to whether the denial is bona fide or a mere pretence and/or made with an ulterior motive to delay the investigation. In case Court comes to the conclusion that the denial is bona fide, it may accede to the prayer, but if, however, it is of the view that the same is a mere pretence and/or made with an ulterior motive to delay the investigation, question for grant of such a prayer would not arise. Unjustified grant or refusal of such a prayer would not necessarily enure to the benefit of either party nor the same would be detrimental to their interest. In case prayer is granted and test identification parade is held in which a witness fails to identify the accused, his so-called claim that the accused was known to him from before and the evidence of identification in Court should not be accepted. But in case either prayer is not granted or granted but no test identification parade held, the same ipso facto cannot be a ground for throwing out evidence of identification of an accused in Court when evidence of the witness, on the question of identity of the accused from before, is found to be credible. The main thrust should be on answer to the question as to whether evidence of a witness in Court to the identity of the accused from before is trustworthy or not. In case the answer is in the affirmative, the fact that prayer for holding test identification parade was rejected or although granted, but no such parade was held, would not in any manner affect the evidence adduced in Court in relation to identity of the accused. But if, however, such an evidence is not free from doubt, the same may be a relevant material while appreciating the evidence of identification adduced

in Court.

(c) Evidence of identification of an accused in Court by a witness is substantive evidence whereas that of identification in test identification parade is, though a primary evidence but not substantive one, and the same can be used only to corroborate identification of accused by a witness in Court.

(d) Identification parades are held during the course of investigation ordinarily at the instance of investigating agencies and should be held with reasonable despatch for the purpose of enabling the witnesses to identify either the properties which are subject matter of alleged offence or the accused persons involved in the offence so as to provide it with materials to assure itself if the investigation is proceeding on right lines and the persons whom it suspects to have committed the offence were the real culprits.

(e) Failure to hold test identification parade does not make the evidence of identification in Court inadmissible rather the same is very much admissible in law, but ordinarily identification of an accused by a witness for the first time in Court should not form basis of conviction, the same being from its very nature inherently of a weak character unless it is corroborated by his previous identification in the test identification parade or any other evidence. The previous identification in the test identification parade is a check valve to the evidence of identification in Court of an accused by a witness and the same is a rule of prudence and not law. In exceptional circumstances only, as discussed above, evidence of identification for the first time in Court, without the same being corroborated by previous identification in the test identification parade or any other evidence, can form the basis of conviction.

(g) Ordinarily, if an accused is not named in the first information report, his identification by witnesses in Court, should not be relied upon, especially when they did not disclose name of the accused before the police, but to this general rule there may be exceptions as enumerated above.

55. In *State (N.C.T. of Delhi) Vs. Navjot Sandhu @ Afsan Guru*, , it was contended that a test identification parade should have been held to assure credibility of the evidence in identification of the accused by the shop keepers. The Supreme Court relied upon the judgment in *Malkhansingh and Others Vs. State of Madhya Pradesh*, . to hold that identification in Court was substantive evidence while T.I.P. was corroborative evidence for identification in Court, if required. What weight must be attached to the evidence of identification in Court not preceded by a T.I.P. is a matter for the court to examine on facts. Identification in the dock may be doubted where the identifying witness is a total stranger who had just a fleeting glimpse of the person identified or had no particular reason to remember the persons concerned. In *Bollavaram Pedda Narsi Reddy and others Vs. State of Andhra Pradesh*, , the facts were of a fleeting glance during a hit and run attack in the darkness of the night when it was held that the belated identification in the dock in absence of earlier T.I.P. vitiated the

same. In Kanan and Others Vs. State of Kerala, , the facts were of a mob attack, when the appellants were seen running away with the witness admitting that he knew the appellants by face and yet named them while identifying them in Court indicating of that their names had been supplied to the witnesses by someone else. The latter two cases are completely distinguishable on facts of the present case.

SHYAM BIHARI PASWAN

56. The Appellant has been convicted u/s 364A/34 and 395 I.P.C and sentenced to R.I. for life and ten years under the latter. P.W. 17 in his evidence has stated that when their vehicle was intercepted one of the abductors who got off the motorcycle and pushed P.W. 18 from the Gypsy into the Bolero had a mole on his cheek. In like manner, as the appellants Krishna Bihari Singh and Jawahar Koery, P.W. 17 identified this appellant in the test identification parade held on 5.2.2007. The appellant surrendered on 18.12.2006 and was in Police custody on remand from 19.12.2006 to 26.12.2006. P.W. 17 and 20 were released on 11.1.2007. The arguments that the witness therefore, had opportunity to see the accused, whose photograph was taken and he was moved around for which he wrote to the Human Rights Commission etc. is of no relevance as on facts, this Court is satisfied that there has been no delay in the T.I.P. So as to vitiate the same. The argument of alleged illegality in the T.I.P. is of no avail and only an ingenuity in this appeal as no such questions were put in cross-examination to P.W. 9, the Magistrate, who conducted the T.I.P. The witness named the appellant as one of the four accused present in the dock on 27.11.2007, when he stated that he did not identify other persons present, making a clear distinction.

ANGAD KOERY

57. The appellant Angad Koery has been convicted u/s 364/34 and 395 I.P.C. and sentenced to R.I. for life and ten years under the latter. He has been identified in the test identification parade by P.W. 17 by the scar injury over his left eye as the person, who was sitting on the motorcycle at the time of abduction. The attempted challenge to the test identification parade on grounds of any procedural irregularities does not impress the court as no such grounds on facts sought to be raised in the appeal were either raised in the trial court or put in cross examination to the Magistrate, P.W. 9, who conducted the T.I.P. There shall be a presumption of regularity of official acts u/s 114(e) of the Evidence Act, unless the foundational facts be on record to rebut the same. The absence of the same coupled with the positive identification of the appellant by P.W. 17 in the dock also leaves this Court satisfied of the correctness of his conviction based on cogent evidence.

BIRBAL CHAUDHARY

58. The appellant Birbal Chaudhary has been convicted u/s 364A/34 and 395 of I.P.C. and sentenced to R.I. For life and ten years under the latter. He has been identified in the T.I.P. by P.W. 18. It has to be remembered that the witness was

a driver earning his livelihood in the employment of P.W. 5, 17 & 20. His interest in identification of the accused was obviously limited and he was clearly worried of his own safety when he may not remain in the employment of aforesaid witnesses. The appellant was identified as the Mukhiya of village Ganjbharsara, where the victims had been kept on the night of 22.11.2006 before they were moved to village Dilhuva. P.W. 17 on 22.11.2007 stated in Court while recognizing other accused present in the dock that Mukhiya Ji was not present in Court. This is nothing but a positive identification of the accused by affirmance of the witness that he recognizes the physical features of the accused. He clearly states that they were kept in the house of Mukhiya of village Ganjbharsara. From the deposition of P.W. 18, it is apparent that despite having recognized the appellant during T.I.P. he prefers to play safe in Court by again stating that he never recognized any body and that he does not do so today also. The house of the appellant was one of the places of confinement shown by P.W. 18 to P.W. 8, the first investigating officer, as one of the places of confinement where the victims were moved in the evening on the second day before he was released at night. The witness had stated during T.I.P. that the appellant was the person who had pulled him from the Gypsy and pushed him into the Bolero. This clearly tallies with the evidence of P.W. 17, who stated that P.W. 18 was pulled out from the Gypsy and pushed into the Bolero. Clearly worried for his own safety, the witness did not identify the appellant on 11.12.2006 in T.I.P. P.W.17 has stated in his deposition of the nocturnal knocks on his door after the trail started. But only after P.W. 18 appears to have been assured of his own safety that he mustered courage again, filed a fresh application and identified the appellant barely three days later on 14.12.2006. It is not the case of the appellant that the witness had the opportunity to see him between 11.12.2006 to 14.12.2006. The appellant preferred Cr. Revision No. 2 of 2007 against the same before the Sessions Judge, Buxar and which was dismissed on 16.1.2008. The appellant did not question the dismissal bringing the matter to a finality. The emphasis of the appellant on the dispute in his identity when P.W. 18 describes him of wheatish complexion and P.W. 17 describes him as fair cannot be given much credence. There is not much difference between fair and wheatish Indian skin as distinct from European skin. P.Ws. 8, 17, 18 & 19 had consistently stated that the victims having been kept in the house of the appellant, not disputed by the appellant in his cross-examination, when in his petitions u/s 317 of the Criminal Procedure Code on several dates describes himself as "Mukhiya". His involvement in the abduction and confinement, therefore, stands established.

59. In *Suman Sood @ Kamal Jeet Kaur Vs. State of Rajasthan*, the conviction was u/s 364A of the Penal Code. It was held in paragraph 41 as follows:

41. Regarding identification of accused, both the courts have considered the evidence of prosecution witnesses and recorded a finding that identity of the accused was established beyond doubt. We are also satisfied that evidence of PW 9, victim Rajendra Mirdha was natural and inspired confidence. His evidence established that he was kidnapped in the morning of February 17, 1995 and he

remained with the kidnappers up to the date of encounter on February 25, 1995, i.e. for eight-nine days. Obviously, therefore, his evidence was of extreme importance. It was believed by both the courts and we see nothing wrong in the approach of the courts below. It is true and admitted by the prosecution witnesses that the photographs of the accused were shown on television as also were published in newspapers. That, however, does not in any way adversely affect the prosecution, if otherwise the evidence of prosecution witnesses is reliable and the Court is satisfied as to identity of the accused. Even that ground, therefore, cannot take the case of the appellants further. It is thus proved beyond doubt that the accused had committed offences punishable u/s 343 read with 120B, IPC as also u/s 346 read with 120B, IPC.

60. In Mahabir Vs. The State of Delhi, it has been held as follows:

12. It is trite to say that the substantive evidence is the evidence of identification in Court. Apart from the clear provisions of Section 9 of the Evidence Act, the position in law is well settled by a catena of decisions of this Court. The facts, which establish the identity of the accused persons, are relevant u/s 9 of the Evidence Act. As a general rule, the substantive evidence of a witness is the statement made in Court. The evidence of mere identification of the accused person at the trial for the first time is from its very nature inherently of a weak character. The purpose of prior test identification, therefore, is to test and strengthen the trustworthiness of that evidence. It is accordingly considered a safe rule of prudence to generally look for corroboration of the sworn testimony of witnesses in Court as to the identity of the accused who are strangers to them, in the form of earlier identification proceedings. This rule of prudence, however, is subject to exceptions, when, for example, the Court is impressed by a particular witness on whose testimony it can safely rely, without such or other corroboration. The identification parades belong to the stage of investigation, and there is no provision in the Code which obliges the investigating agency to hold or confers a right upon the accused to claim, a test identification parade. They do not constitute substantive evidence and these parades are essentially governed by Section 162 of the Code. Failure to hold a test identification parade would not make inadmissible the evidence of identification in Court. The weight to be attached to such identification should be a matter for the Courts of fact. In appropriate cases it may accept the evidence of identification even without insisting on corroboration. (See Kanta Prashad Vs. Delhi Administration, , Vaikuntam Chandrappa and Others Vs. State of Andhra Pradesh, , Budhsen and Another Vs. State of U.P., and Rameshwar Singh Vs. State of Jammu and Kashmir, .

61. In Ram Nath Mahto Vs. State of Bihar, the facts were of a night robbery in a running train and the killing of one and hurt to others. The appellant was one of the dacoits. P.W. 6 identified him in the T.I.P. P.W. 7, who held the T.I.P. proved the identification by P.W. 6 in the T.I.P. of the accused as carrying a revolver during dacoity. P.W. 6 chose not to identify the appellant at the trial by stating

that he could not identify the accused whom he identified in T.I.P. The trial Judge noted the demeanour of the witness trembling at the stare of the accused, afraid, holding that the witness was frightened to confirm recognition. The Court relied upon the deposition of P.W. 7, the Magistrate to uphold the conviction.

62. The requirements for a test identification parade of persons is provided for in Rule 236 (a) of the Bihar Police Manual, while identification of articles is provided for in Clause (b). The primary requirement under the latter is that articles similar to the suspected articles are made available. Look alike Bolero vehicle and Hero Honda motorcycle were put on T.I.P. The remo rifle was a unique one but still rifles were placed and similar looking newspapers packets in which money was recovered were also put up in the T.I.P. Quite obviously there was no defect in the test identification parade of the articles and in any event it has not been questioned during the trial or in the cross-examination of those who conducted the T.I.P.

HARIBANS RAM

63. The appellant Hari Bans Ram has been convicted u/s 364A/34 I.P.C. And sentenced to R.I. For life but was acquitted of the charge u/s 412 of the Penal Code as the motorcycle recovered from his house on the information furnished by co-accused Jawahar Koery turned out to be the property of the son of appellant Krishna Bihari Singh. P.W. 17 clearly recognized the appellant in the dock as the person wearing the black jacket and at whose house he along with P. W. 20 were last kept in village Baradih before release on the fateful night. The reasoning for upholding the identification in the dock of other co-accused applies with equal force to this appellant also. The victim therefore in proper circumstances fully identified the appellant and there could be no ground for mistakes on his part in the facts of the case. This identification is corroborated by the information furnished by co-accused Jawahar Koery in his confession to the Police that the victims were kept in the house of Radhey Shyam of village Baradih, the son of the appellant. This was clearly admissible in evidence u/s 27 of the Evidence Act. The argument that he is being made answerable for the ills of his son, who was now dead, is nothing but an argument in desperation. Likewise, the argument that he was charged u/s 368 I.P.C. but convicted u/s 364A I.P.C. does not impress the Court at all. Section 368 I.P.C. reads as follows:

Whoever, knowing that any person has been kidnapped or has been abducted, wrongfully conceals or confines such person, shall be punished in the same manner as if he had kidnapped or abducted such person with the same intention or knowledge, or for the same purpose as that with or for which he conceals or detains such person in confinement.

64. In the statement of accusation u/s 313 Cr.P.C., it was clearly explained to him that the allegation against him was of having kept the victims in confinement knowing that they have been abducted. The appellant denied the charge. Section 464 of the Code of Criminal Procedure provides that no sentence by a court of

competent jurisdiction will be deemed invalid on the ground that no charge was framed or any irregularity in the charge or misjoinder of charge unless in the opinion of the Court a failure of justice has occasioned thereby.

65. Section 368 I. P. C. puts the offence prescribed therein at par with 364 A by raising a statutory presumption based on a legal fiction of the former being a deemed offence under the latter, if the evidence be there. P.W. 19, the Investigating Officer, has deposed that appellant Jawahar Koery had furnished information, admissible u/s 27 of the Evidence Act, that the victims had been kept in the house of the appellant under a contractual agreement for sharing a part of the ransom money and that the motorcycle recovered from the house of the appellant had been given as security in part payment of the contractual amount. This Court, therefore, finds no error in the conviction of the appellant u/s 364A in its entirety.

66. In the case of Suman Sood (*supra*) the Apex Court held as follows at paragraph 60:

60. Kidnapping for ransom is an offence of unlawfully seizing a person and then confining the person usually in a secret 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.

RAM BRIKSH KOERY, HIRDAY KOERY, MANGLA SINGH, SAROJ SINGH

67. The appellants Ram Briksh Koery, Hirday Koery Mangla Singh and Saroj Singh have been acquitted of the charge under 395 I.P.C. but convicted u/s 364A/34 I.P.C. And sentenced to R.I. For life. The appellants have been arrested on 10.12.2006 from the house of appellant Jawahar Koery. P.W. 19, who carried out the raid stated that the appellants attempted to flee on seeing the Police. They are stated to have been providing logistic support to the accused. That they may not have been put on T.I.P. Or identified in the dock is not relevant as they were taken into custody contiguous with the continued confinement of the victims from the house of an accused positively involved proved by cogent and convincing evidence, when their conviction is with the aid of Section 34 I.P.C. of aiding the aforesaid accused, and mere presence shall suffice without need for proof of any positive overt act in furtherance. Clearly they were persons looking after the appellants and the victims by preparing food and otherwise looking after their well being. In a operation of the present nature it needs no discussion that several players are involved with their respective roles assigned to them as it is not possible for an individual to commit the acts in question singlehandedly with the smoothness of execution presently noticed.

RAMASRAY KOERY, RAM DARASH KOERY

68. The appellants Ramashraya Koery and Ram Darash Koery of village Dilhuva have been convicted u/s 364A/34 I.P.C. and sentenced to R.I. for life. They have

neither been put on T.I.P. nor identified by P.W. 17, 18 or 20. The evidence against them in the confession of accused Shyam Bihari Paswan is that the victims were kept in their house at village Dilhuva. This part of the confession by itself shall not be sufficient for the conviction of the appellants. But when it is corroborated by the evidence of P.W. 17 identifying to P.W. 19 the house of the appellants as the place where they were kept in confinement at village Dilhuva after being moved from Ganjbharsara on the night of 22.11.2006. the weak evidence against them gets fortified fully to justify their conviction.

69. The mobile forensic evidence of the call printouts of the mobile phones of the concerned appellants admissible u/s 63(b) of the Evidence Act furnished by the B.S.,N.L authorities during the period of confinement shows that the cell phones were located within the B S N L tower Kochas A in the location of the villages where the victims were kept during confinement.

70. This Court finds no merit to warrant interference with the conviction of the appellants u/s 364A/34, 395 and 412 I.P.C. variously. On the question of sentence, the parties were put on notice both on the question of the death sentence awarded and the enhancement in the term of life imprisonment beyond its normal connotation of 14 years. Counsels for the parties made elaborate submissions that not only was death sentence not warranted but also that the term life imprisonment be read in its normal connotation of 14 years and no case for enhancement thereof as discussed in the case of Swami Sraddananda (supra) or Nazir Khan (supra) was made out.

71. The question of a death sentence and when it is to be imposed has been a vexed question engaging the attention of the Courts considerably and consistently. No fixed yardstick, formula or guidelines have evolved for the same and it has its bearing on the facts and circumstances of a case from which the vision, understanding and views of the Judge have been found to be inseparable. The phrase rarest of rare cases still remains to be defined. While concern for human life, the norms of a civilized society and the need to reign in crime and the criminal has engaged the attention of the courts, it has equally been the view that the sentence has to be based on the actions of the criminal rather than the crime. The two theories prevalent are deterrence and reformation. Lately, the doctrine of proportionality of the sentence vis-?-vis the crime, the victim and the offender has also engaged the attention of the Court. The complexity of the question has led to the reference of the matter on a difference of opinion to a larger Bench in Rameshbhai Chandubhai Rathod Vs. State of Gujarat, .

72. The death sentence of the two appellants appears to be founded on the reasoning of their antecedents only. The facts and evidence of the case as discussed herein above does not create any distinction in the acts of the two appellants and the others so as to indict them with a higher level of conduct in the abduction or confinement for the purpose of sentence. No evidence has transpired with regard to any act on part of the two appellants of having threatened to cause death or hurt to the victims or conduct of a nature giving

rise to reasonable apprehension in the mind of the victims of death or hurt much less having caused death or hurt. There is thus no justification to distinguish their case from that of the other appellants for award of a different sentence, as by no stretch of reasoning, classification can be sustained in law on antecedents only as a rarest or rare case warranting the extreme penalty of death. In *Nazir Khan and Others Vs. State of Delhi*, , it was held at paragraph 36 as follows:

36. In the case at hand, the entire planning for commission of offence punishable u/s 364A was masterminded and executed by Umar Sheikh who has managed presently to go out of net of law. In his case, death sentence may have been appropriate. But in case of the co-conspirators (the present six accused-appellants) similar approach is not warranted on the peculiar facts found/established. No distinctive feature has been indicated to impose two different sentences i.e. death sentence for three and life sentence for three others. There is no appeal by the prosecution to enhance the sentence in those cases where life sentence has been imposed. It would be therefore appropriate to impose life sentence on all the six accused-appellants.

The death sentence awarded to the two appellants Krishna Bihari Singh and Jawahar Koery u/s 364A of the Penal Code is, therefore, held to be not sustainable. The reference made in that context is not confirmed and is negated by this Court. The sentence of the two appellants thereunder is altered to one of life imprisonment along with the other appellants. The sentence imposed under other provisions of the Penal Code on the two appellants warrants no interference.

73. Certain features of the present case are too striking not to be noticed. The crime was not committed spontaneously. It was committed in a well planned premeditated manner with full logistics. The players were many. The smoothness and flawless nature of the operation shows that the appellants were not novices. It was an organized criminal antisocial activity. It was the sheer lust for money of the appellants, who otherwise were not paupers or beggars to acquire further easy money, obviously to fuel only materialistic desires. So blindly were they driven by their selfish lusts that the impact of the crime not only upon the victims, but their relatives and the society in general was an aspect with which they were the least concern. While a person who is murderously assaulted suffers an agony once till life is snuffed out, the victims herein underwent the agony of uncertainty for their lives everyday at the hand of the abductors for fifty two days unsure what would happen to them ultimately. The fear, pain and hurt undergone by them for fifty two days is far worse than an assault snuffing out life immediately. The tenacity and grit with which the accused steadfastly stuck to their goal of ransom, notwithstanding the efficiency shown by the Police in tracking their movements through mobile conversations is only concrete evidence of the heartlessness and maniac desire of the accused to succeed in their endeavour. Such persons cannot be held amenable to reaffirmation and constitute a danger to the society. The State of Bihar has unfortunately being

infamous in the recent of such crime.

74. It has been discussed hereinabove that the punishment should be commensurate to the criminal and not to the crime alone. Order in the society rests in the enforcement of the rule of law. Deviant behaviour from the norms of the society demands corrective action by sentencing commensurate with the level of deviancy. A light punishment will only embolden those accused of offences like the present. While an excessively harsh punishment may not be commensurate with the proportionality of the crime and punishment that civilized society does not punish each crime with punishment as severe as the crime itself. In the case of Nazir Khan (supra) also u/s 364A I.P.C. at paragraph 41 the Supreme Court held:

The criminal law adheres in general to the principle of proportionality in prescribing liability according to culpability of each kind of criminal conduct. It ordinarily allows some significant discretion to the Judge in arriving at a sentence that reflects more subtle considerations of culpability that are raised by the special facts of each case. Punishment always to fit with the crime.

75. In Mahesh and Others Vs. State of Madhya Pradesh, held as follows:

6. We share the concern of the High Court. We also feel that it will be a mockery of justice to permit these appellants to escape the extreme penalty of law when faced with such evidence and such cruel acts. To give the lesser punishment for the appellants would be to render the justicing system of this country suspect. The common man will lose faith in Courts. In such cases, he understands and appreciates the language of deterrence more than the reformatory jargon. When we say this, we do not ignore the need for a reformatory approach in the sentencing process. But here, we have no alternative but to confirm the death sentence.

76. The term life imprisonment recently fell for consideration by the Supreme Court in Swamy Shraddhananda @ Murali Manohar Mishra Vs. State of Karnataka, . It related to a case of death sentence. After consideration and discussion of earlier judicial pronouncements and provisions of the Penal Code at paragraphs 57, 60, 61, 62, 66, 67, 74, 75 and 76 the Court held that in the nature of the crime a sentence of 14 years may be grossly disproportionate or inadequate calling for sentence beyond 14 years or imprisonment for the full life.

77. In the case of Nazir Khan (supra), the conviction was u/s 364A I.P.C. Declining to uphold death sentence while others were given life imprisonment, on the question of sentence it was held at paragraph 44:

44. ...However, considering the gravity of the offence and the dastardly nature of the acts and consequences which have flown out and would have flown in respect of the life sentence, incarceration for the period of 20 years would be appropriate. The accused-appellants would not be entitled to any remission from the aforesaid period of 20 years. As observed by this Court in Ashok Kumar alias

Golu Vs. Union of India and others, and Sat Pal alias Sadhu Vs. State of Haryana and Another, , "imprisonment for life" means imprisonment for the full span of life.

78. The insertion of Section 364A I.P.C. in 1993 was but the response of the society to the changing scenario of crime. Law must be dynamic and measure up to the new challenges faced. Kidnapping for ransom is a phenomena of modern crime with quick lure for good easy money without labour and investment by the sweat of the brow. The Section provides for life imprisonment for threat to cause hurt and apprehension of hurt apart from real hurt. The word hurt cannot be read confined to Section 319 of the Penal Code, as it would result in absurdity to award death or life imprisonment for the same. This Court is, therefore, satisfied on the facts and circumstances of the present case to impose rigorous imprisonment of 20 years. Justice shall then be done both to the victims and perpetrators of the crime.

79. In the result, the death sentence of the two appellants in Criminal Appeal Nos. 716 of 2008 and 761 of 2008 is not confirmed by this Court. They are awarded the alternative punishment of imprisonment for 20 years. It has been held that their actions are in common with the other appellants. Even otherwise this Court is satisfied that imprisonment for 14 years to the others is not sustainable and is fit to be enhanced to 20 years which this Court orders.

80. The appeals are dismissed with the modification and enhancement of sentence.

Dharnidhar Jha, J.

81. I agree.