

(2014) 10 BOM CK 0153

In the Bombay High Court

Case No : Criminal Appeal Nos. 738, 740 and 741 of 2009

Madansingh Hirasingh Bhakuni

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 14-10-2014

Acts Referred:

Arms Act, 1959 — Section 24, 25, 3

Criminal Procedure Code, 1973 (CrPC) — Section 161, 313

Penal Code, 1860 (IPC) — Section 34, 354 A, 364 A, 364-A

Citation : (2015) ALLMR(Cri) 1011 : (2015) 3 BomCR(Cri) 401

Hon'ble Judges : P.V. Hardas, J; Anuja Prabhudesai, J

Bench : Division Bench

Advocate : Subhash Jha a/w Rushita Jain, Ashish Shukla and Vijay Shankar Tiwari, Advocates for the Appellant; U.V. Kejriwal, APP, Advocates for the Respondent

Judgement

Anuja Prabhudesai, J.—These appeals are directed against the judgment dated 22.05.2009 whereby the learned Sessions Judge has convicted the aforesaid appellants, (hereinafter referred to as the accused) for the offence punishable under Section 364-A r/w 34 of the I.P.C. and sentenced them to under go RI for life and to pay fine of Rs. 200/- in default S.I. for 15 days and further convicted under Section 3 r/w 24 of the Arms Act and sentenced to undergo RI for one year and to pay fine of Rs. 200/in default SI for 15 days. The brief facts necessary to decide these appeals are as under. Punit Sanghvi, the victim and the accused No. 1, Madansingh Bhakuni were studying in Godavari High School, Chinchwad. On 29.09.2005 there was a parent teacher meet in the school. While the victim Punit was about to leave the school, the accused Madansingh requested him to come to his house to teach him accountancy. It is alleged that the accused Madansingh took Punit to the room of the co-accused Manojkumar (A-3) and Mahendrasingh, a juvenile. It is alleged that the accused Madansingh dragged Punit into the room while the co-accused Manojkumar and Mahendrasingh had revolver and knife in their hands and threatened to kill him

in case he raised an alarm. They informed the victim Punit that they had kidnapped him for ransom and asked him to give the mobile number of his father. Thereafter, they covered his face with tape and kept him confined in the room, till 03.10.2005.

2. It is the case of the prosecution that during the said period, the accused made several calls to PW-1 Dilip Sangvi, the father of Punit and demanded ransom of Rs. 20 lakhs. On receiving the first call on 29.09.2005, Dilip Sangvi lodged a report at Exh.22, pursuant to which PW-14 Satish Deore, P.I. registered C.R. No. 377 of 2005 at Pimpri Police Station against the unknown persons for offence punishable under Section 364-A r/w 34 of the IPC. It is the case of the prosecution that from 29.09.2005 till 02.10.2005, the accused had made several ransom calls to PW-1 Dilip Sangvi. PW-1 had divulged the subsequent events to the Police, pursuant to which his supplementary statements came to be recorded. It is further the case of the prosecution that PW-1 had recorded the conversation of the kidnappers and had handed over the said audio cassette to the Investigating Officer, which was seized under panchanama at Exh. 130.

3. It is alleged that on 03.10.2005, the brother of Madansingh rescued the victim and dropped him near his house. PW-14 Satish Deore, recorded the statement of the victim Punit (PW-2) and referred him to Yeshwantrao Chavan Hospital for medical examination. PW-11 Dr. Arvind Patil examined PW-2 Punit and submitted the medical certificate at EX. 101. Pursuant to the statement of the victim, PW-14 Satish Deore arrested the accused. Upon interrogation, the accused made disclosure statements, which led to the recovery of the revolver, knife and cookary. The police obtained the voice samples of the accused and sent the same for voice analysis. The police also recorded the statements of the witnesses and on completion of the investigation, a final report implicating the accused was filed before the J.M.F.C., Pimpri, Pune.

4. Upon committal of the case, the learned Sessions Judge framed charge against the accused for offence under Section 354 A of the IPC and under Section 3 r/w 25 of the Arms Act. The accused pleaded not guilty and claimed to be tried. The prosecution in support of its case examined 16 witnesses. The statements of the accused were recorded u/s. 313 of the Cr.P.C. The accused denied having committed any offence and alleged that they were falsely implicated. On appreciating and analyzing the evidence on record, the learned trial Judge, held the accused guilty of the offences punishable under Sections 364-A r/w 34 of the IPC and Section 3/25 of the Arms Act, sentenced them as stated above. Being aggrieved by the said conviction and sentence, the accused have preferred these appeals.

5. Learned Counsel Shri. Jha has argued on behalf of the accused. He has submitted that the evidence of PW-1 as well as PW-2 suffers from material discrepancies and contradictions and that no implicit reliance can be placed on their evidence. He has further submitted that the alleged rescue of the PW-2 is shrouded in mystery. He has further argued that the conduct of the victim in not

disclosing the incident to his father is highly unnatural and renders the prosecution case doubtful.

6. Learned Counsel Mr. Jha has further submitted that the prosecution has not complied with the mandatory requirements as specified by the Apex Court in the case of Ram Singh and Others Vs. Ram Singh, , hence, the conversation allegedly recorded by the father of the victim, is not admissible in evidence. Learned Counsel Mr. Jha has urged that the prosecution has failed to prove threat, violence or demand for ransom, an essential ingredient for the offence punishable under Section 364 A of the IPC. He has relied upon the decisions of the Apex Court in Badshah and Others Vs. State of U.P., and Lohit Kaushal Vs. State of Haryana, .

7. It was next argued that most of the witnesses including the witnesses to the recovery panchanama have not supported the case of the prosecution. Learned Counsel therefore contends that the prosecution has failed to prove the charge of kidnapping and demand for ransom. He has drawn our attention to the evidence of Nandan Bhakuni, the brother of the accused Madan. who was examined as defence witness pursuant to the order dated 08.10.2012 passed by this Court and has submitted that the evidence of this witness belies the case setup by the prosecution. He has argued that if reasonable doubt arises regarding the guilt, the accused are entitled for benefit of doubt. He has relied upon the decision of the Apex Court in Kali Ram Vs. State of Himachal Pradesh, . Learned Counsel therefore contends that the prosecution having failed to establish the demand for ransom as well as the charge of kidnapping, the conviction and sentence cannot be sustained.

8. Learned APP, Mrs. Kejriwal has argued that the order of the trial Judge is well reasoned and does not warrant any interference. He has further argued that the evidence of the victim, which is duly corroborated by his father, PW-1 Dilip Sangvi, proves beyond reasonable doubt that the accused had kidnapped the victim Punit and had demanded ransom of Rs. 20 lakhs from his father. He has argued that the evidence of the voice analyst vis-?-vis the report at Exh. 109 proves the demand for ransom. He has further argued that the evidence of PW-7 and PW-12 as well as the medical evidence and the recoveries of the weapons made pursuant to the disclosure statements of the accused serve as corroborative evidence.

9. Before advertng to the facts of the case, it would be advantageous to refer to the definition of "kidnapping for ransom" as defined under Section 364-A, which was inserted in 1993, and which reads as under:-

"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."

In Vishwanath Gupta Vs. State of Uttaranchal, , the Apex Court has held that:-

"6. 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 364-A 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 364-A of the Indian Penal Code. Any of the three ingredients can take place at one place or at different places...."

10. In the case of Suman Sood @ Kamal Jeet Kaur Vs. State of Rajasthan, , 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."

11. The division Bench of this court in Philips Fadrick D'souza and Ravindra @ Balu Pandurang Kambre Vs. The State of Maharashtra and The Inspector of Police, has held that:- "The offence under Section 364-A is not made out only upon the commission of the unlawful act of kidnapping or abduction. The essential ingredients of the statutory provision, apart from the act of kidnapping, abduction or, as the case may be, keeping a person in detention thereafter, are a threat to cause hurt or a reasonable apprehension of such a consequence or causing death or hurt, in order to compel the payment of ransom or the doing or abstention from doing any act by the government, a foreign state, an inter governmental body or by any person. The purpose of the unlawful act is to demand ransom or to compel the doing or abstention from doing of a particular act. Kidnapping or the abduction by itself does not lead to an inference of the underlying purpose with which it was carried out. The purpose must exist at the time when the act of kidnapping or abduction takes place. Whether such a purpose existed at that time will have to be deduced from all the attendant circumstances. Events which take place prior to, at the time of and subsequent to the commission of the offence would weigh in the balance. In interpreting Section 364-A the Court must be cognizant of the fact that the provision was introduced in order to deal with the serious menace posed by terrorism to the stability of civil society.

12. In the case of Lohit Kaushal (Supra), the Apex Court has cautioned that kidnapping is a reprehensible crime and the abhorrence which it creates in the mind of the Court, tend to militate against the fair trial of an accused in such

cases. A Court must, therefore, guard against the possibility of being influenced in its judgment by sentiment rather than by objectivity and judicial considerations while evaluating the evidence.

13. In the instant case, the findings of the trial court are primarily based on the testimony of PW-2 Punit, the victim of the crime and PW-1 Dilip Sangvi, the father of the victim. PW-1 Dilip Sangvi had lodged the F.I.R. dated 29.05.2005 at Exh.22, against unknown persons for kidnapping his son Punit for Ransom. The testimony of PW-1 vis-?-vis the FIR at Exh. 22 indicates that his son Punit, aged about 17 years, was studying in standard XII in Godavari Higher Secondary School, Akurdi. PW-1 and his wife as well as PW-2 Punit had attended parent-teacher meet in the school on 29.09.2005. PW-1 and his wife returned home at about 1.30 pm. Since PW-2 did not return home till evening, PW-1 made enquiries with the school authorities, but without any success. PW-1 has further deposed that in the same evening, he received a missed call on his mobile No. 9822432337. When he called on the said number, he learnt that the said number was of STD booth and the call was made by the two boys. PW-1 has deposed that at about 8.00 p.m. he received another call on his mobile asking him to keep Rs. 20 lakhs ready by the next day for release of his son. He, therefore, went to the Crime Branch, Pune and lodged the report at Exh.22.

14. The testimony of PW-1 reveals that he had received several calls on the following dates asking him to come with the ransom money at different places such as Pandit Automobiles, Dange Chowk, Pimpri Bridge, Home Science School and Shagun Chawk. PW-1 has deposed that he had been Shagun Chowk, but none had come to collect the money. Upon inquiries, he learnt that all these calls were made from different STD booths. He had informed the police about the said calls whereupon the police had recorded his supplementary statements. PW-1 has deposed that he had recorded the conversation received on his mobile and that he had handed over the said cassette to the police.

15. PW-1 has stated that his son had returned home on 3rd October, 2005. He has stated in his cross-examination that he had not asked his son as to what had happened and that his son too had not told him anything about the incident. He has stated that from the date of the incident till the date of his evidence i.e. 11.10.2007, he had not asked his son as to where he had gone.

16. There are several discrepancies in the prosecution case as regards the demand for ransom and the involvement of the accused in making such calls. It is to be noted that though it is alleged that PW-1 had received calls for ransom, which were made from different STD booths, the prosecution had not made any attempts to prove that the accused were seen at the said STD booths or that they had made calls during the relevant time from any of the said STD booths.

17. It is also pertinent to note that the evidence of PW-1 indicates that the unknown callers had told him to come with the ransom money at different places such as Pandit Auto Mobiles, Dange Chowk, Home Science School, Shagun

Chawk and at Pimpri Bridge. The testimony of PW-1 indicates that he had been to Shagun Chowk but nobody was present at the said place. There is absolutely no evidence to prove that either the investigating team or the complainant had visited the other places viz Pandit Automobiles, Dange Chowk, Shagun Chowk and Pimpri Bridge and that the accused were seen near the said places. It is thus evident that the police officers who were informed about the said calls had not made any attempts to ascertain whether the kidnappers had visited the above stated places to collect the ransom and whether there was any seriousness in their demand. They did not lay a trap and did not attempt to detect and intercept the kidnappers or to rescue the victim. In short, the investigating agency did not take any steps to ascertain whether the calls for ransom were hoax or real.

18. The trial court has also relied upon the taperecorded conversation recorded by PW-1 and the evidence of PW-13 Dr. Chongthan Singh vis-?-vis his report at Ex. 109. It may be mentioned that PW-1 has claimed that he had recorded the demands made by the kidnappers and that he had handed over the said cassette to the investigating officer. PW-14 Satish Deore, P.I. has deposed that PW-2 had produced the said cassette before him on 5/10/2005. PW-14 has deposed that he had played the cassette and heard the conversation in presence of Panchas Namdeo Kunjir and Sudhker Deshmukh, prepared a transcript and sealed and seized the said cassette (Ex. A) under panchanama at Exh.130. On 11/10/2005 he recorded the voice samples of the accused Kuldip (Exh.B) and the juvenile(Exh.C) under panchanama at Exh.142 and vide letter dated 24/12/2005 at Exh. 113 he forwarded the cassette as well as the voice samples to Central Forensic Laboratory Chandigarh for analysis and report.

19. PW-13 Dr. Chongthan Singh, Assistant Director, Forensic Science, has deposed that he had received three sealed packets containing three audio cassettes marked Ex. A, B and C. PW-13 marked the conversation of the speakers in the cassette at Exh. A as Q1 and Q2 and the voice samples of Kuldip and Mahendrasingh as S1 and S2 respectively. After scientifically examining the voice quality of the questioned and specimen voice recording PW-13 vide report at Ex. 109 opined that the questioned voice exhibit of the speaker at Ex. Q1 matched with the specimen voice sample at Ex. S1, whereas the questioned voice exhibit of the speaker at Ex. Q2 matched with the sample voice at Ex. S2.

20. In the case of Ram Singh and Others Vs. Ram Singh, , the Apex Court has held that a tape-recorded statement is admissible in evidence, subject to the following conditions.

"32. Thus, so far this Court is concerned, the conditions for admissibility of a taperecorded statement may be stated as follows:-

(1) The voice of the speaker must be duly identified by the maker of the record or by others who recognize his voice. In other words, it manifestly follows as a logical corollary that the first condition for the admissibility of such a statement is to identify the voice of the speaker. Where the voice has been denied by the

maker it will require very strict proof of determine whether or not it was really the voice of the speaker.

(2) The accuracy of the taperecorded statement has to be proved by the maker of the record by satisfactory evidence - direct or circumstantial.

(3) Every possibility of tampering with or erasure of a part of a taperecorded statement must be ruled out otherwise it may render the said statement out of context and, therefore, inadmissible.

(4) The statement must be relevant according to the rules of Evidence Act.

(5) The recorded cassette must be carefully sealed and kept in safe or official custody.

(6) The voice of the speaker should be clearly audible and not lost or distorted by other sounds or disturbance."

21. In the instant case, undisputedly the investigating officer had not instructed PW-1 to record the conversation. It is also to be noted that though PW-1 had passed on the information of every subsequent call received from the alleged kidnappers to the police and his supplementary statements were recorded on every such occasion, in none of the statements recorded under Section 161 of the Cr.P.C., PW-1 had disclosed that he had recorded the conversation. It is also pertinent to note that PW-1 had not sealed the cassette. He had handed over the said cassette to PW-13 only on 5th October, 2005, which was much after the return of his son and after the arrest of the accused. PW-1 has not explained the delay in handing over the cassette to the Investigation Officer. These material discrepancies give rise to the possibility of the cassette being tampered and the conversation being recorded after the arrest of the accused.

22. PW-3 Namdeo, in whose presence the cassette was allegedly played and transcript was prepared and PW-9 Eknath in whose presence the voice samples of the accused were recorded have not supported the case of the prosecution. Furthermore, there is delay in forwarding the cassette to the scientific expert. The testimony of PW-13 does not indicate that he had kept the said cassettes in safe custody from the date the cassettes were seized till the date the cassettes were forwarded to the scientific expert. In the absence of compliance of essential prerequisites for the admission of taperecorded conversation as mandated by the Apex Court, the trial court was not justified in placing reliance on the expert opinion at Exh. 109 and or on relying upon the transcripts of the recorded conversation. Needless to state that exclusion of taperecorded conversation vis-?-vis the report at Exh. 109 further weakens the case of demand for ransom.

23. The story of being kidnapped, as propounded by PW-2, also does not inspire much confidence. PW-2 Punit has also deposed that there was a parent's meet in the school on 29.09.2005 at about 10.00 a.m. and that the parents of the children who had failed in the examination were called to the school. He had deposed that the students were allowed to go home by about 10.00 a.m. He has

stated that when he had reached near school gate, he received a phone call from his classmate Madan (A-1), requesting him to come to his house to teach him accountancy. Accordingly, he went to the house of Madan. Said Madan took him to the room of his friends Manoj and Mahendra. He has deposed that he taught accountancy to Madan and at about 2.00 to 2.30 p.m., when he was getting ready to return home, Madan left the room saying that he would get a motorcycle from his brother. Madan returned after a short while and told him that his brother would come within 15 minutes. As they were leaving the house to meet the brother of Madan, the accused Madan dragged him back to the house. Madan had a revolver in his hand whereas Manoj had a cookari and a knife. They pointed the weapons at him and threatened to kill him in case he attempted to shout. They told him that he was kidnapped and that they wanted money from his father.

24. PW-2 has deposed that the accused had covered his entire face with tape leaving only nose and eyes open. At about 5.30 p.m., the accused No. 2 Kuldip and friend of Madan came to the room. Said Kuldip told him that he was kidnapped and that they wanted ransom from his father. Said Kuldip asked him about the financial position of his father and left the room after taking the mobile number of his father. Mahendra and Manoj stayed with him in the house. The next evening, Kuldip and Madan returned to the room. They did not allow him to go out and compelled him to perform his daily ablutions in the bathroom/sink inside the room. Madan and Kuldip left the room leaving him with Manoj and Mahendra. Madan and Kuldip returned on the next day. After having some discussion with Manoj and Mahendra, they told him that he would be released after receiving money from his father. On the next day, Kuldip and Madan told him that they were going to talk to his father. However, on the next day i.e. on 3rd October, 2005, while Manoj and Mahendra were sleeping in the house, the brother of Madan came to the room and rescued him and thereafter dropped him near his house.

25. PW-2 has stated in his cross-examination, that on the relevant day, he was in his uniform and had carried his school bag, which had two textbooks. He has further stated that he had directly gone to the house of Madan to teach him Accountancy. He has further stated that the accused used to remove the tape from his face whenever they wanted to talk to him. He has stated that on 2nd October 2005; the accused had removed the tape, washed his face and cleaned the marks of tape. Hence, when he had returned home on 3rd October 2005, the marks of tape were not visible on his face.

26. PW-2 has further stated that as soon as he had entered the house, his father had told him to take a wash and freshen up. He has stated that his father had not asked him anything about the incident. He has stated that he had informed his father that the accused Madan had taken him to his house. He has stated that he had not disclosed any other facts to his father till the date of his evidence.

27. PW-2 has further admitted in his cross-examination that he did not recollect

whether on the date he was rescued by the brother of Madan, the room was latched from inside or whether the door was open. He has stated that he as well as the accused Mahendra and Manoj were sleeping in the room when the brother of the accused Madan had entered the room. PW-2 has stated that the brother of the accused Madan woke him up and took him by a rickshaw and dropped him at the distance of 3 to 4 kms away from his house. He has admitted in his cross-examination that he had stated before the police in his statement under Section 161 of the Cr.P.C. that he had rescued himself when Mahendra and Manoj were sleeping. He has denied the suggestion that he was not abducted and that he had stayed in the said room as per his own wish and will.

28. The evidence of PW-2 indicates that the accused had called him to his house under the pretext of teaching him accountancy and later taken him to the room occupied by accused Mahendra and Manoj and confined him in the said room from 29.09.2005 to 03.10.2005 at gunpoint. The room wherein PW-2 was allegedly confined was one of the ten rooms of a chawl owned by PW-7 Hiran Nakhate and his wife PW-12 Hirabai Nakhate. Their testimony indicates that they had rented the said room to the accused Mahendra Singh. They have deposed that on 02.10.2005, they had invited the accused for the birthday party of their son, and that the accused had refused to join them. The fact that the accused had refused their invitation can hardly be considered as a suspicious conduct. Moreover, the testimony of these witnesses does not indicate they had seen the victim in the said room or that they had sensed any suspicious activities going on in the room.

29. The room wherein PW-2 was allegedly confined was of 10 x 10 dimensions, with a tin sheet roof, a wooden door, and a window. The evidence of PW-7 and PW-12 indicates that all the adjoining rooms were rented and occupied by about 50-60 tenants. The evidence of these witnesses further indicates that the said chawl is situated in a crowded locality. PW-2 was in the said room for about 5-6 days, despite which he had not raised an alarm. The fact that the prosecution has not examined any of the neighbours, also leads to an inference that the neighbours had not seen the victim in the room, and had not suspected that some dubious activities were being carried out by the accused in the said room.

30. PW-2 claims that on 03.10.2005, while he and the accused Mahendra and Manoj were sleeping in the room, the brother of the accused Madan entered the room and rescued him. It is however to be noted that PW-2 was unable to disclose whether the door of the room was latched from inside. He was also not able to explain as to how the brother of the accused Madan had opened the latch and entered the room wherein he was confined. It is also pertinent to note that PW-2 had not stated in his statement under Section 161 Cr.P.C. that he was rescued by the brother of the accused Madan on the contrary PW-2 has admitted that in his statement under section 161 Cr.P.C. he had stated that he had rescued himself while the accused were asleep. The material variation in the testimony of this witness about his dramatic and mysterious escape on 03/10/2010 throws a

grave doubt regarding the probability of kidnapping.

31. The testimony of PW-2 reveals that after he had reached home his father had not asked him anything about the incident but had merely told him to take a wash and freshen up. He has deposed that after his return he had gone to his room and had a wash. PW-2 has deposed that he had told his father that he was taken by the accused Madan and that till the date of his evidence he had not told his father anything about the incident. The testimony of PW-1 also indicates that he had not asked his son anything about the incident and that his son too had not informed him anything about the incident. PW-1 has deposed that till the date of his evidence he had not asked his son as to where and why he had gone. PW-1 claims that he had not informed the police that PW-2 had returned home.

32. The victim PW-2 was allegedly kidnapped for ransom and was held captive for about a week. In normal circumstances, such traumatic experience would evoke tremendous anxiety, distress, and intense emotions, which on reunion would transform in to a sense of pure exhilaration. In the instant case, the evidence of PW-1 and PW-2 does not reveal any such emotional reunion on the contrary exhibits total indifference. The overall indifferent attitude and conduct of PW-1 in not asking his son about the incident and the equal casual conduct of PW-2 in not sharing with his parents the ordeal he allegedly underwent during his captivity is highly unnatural and renders the story doubtful.

33. There is further discrepancy regarding the attachment of the uniform of PW-2 and the presence of the police in the house on the day PW-2 returned home. It is the case of the prosecution that the victim PW-2 was in his uniform when he was kidnapped by the accused. PW-1 has claimed that PW-1 was in the same uniform when he had returned home on 03.10.2005. He claims that on the same date, during afternoon hours, he had informed the police that his son had returned home. He has stated that police had come to his house in the evening and that the police had attached the uniform. He was unable to state whether the uniform was dirty. He then claimed that he was not at home when PW-2 had returned. He has stated that he could not recollect whether PW-1 was in uniform and whether the police had attached a washed and ironed set of uniform.

34. PW-2 has deposed that when he had reached home on 03.10.2005 at 11.00 a.m., his parents and the police were present in the house. He has stated that he was in his school uniform and that the police had seized the said uniform. Whereas, PW-14 has stated that on 03.10.2005 the complainant had informed him that his son had returned home. PW-14 has stated that neither he nor his subordinates had visited the house of the complainant on 03.10.2005. He has stated that he had called PW-2 to his office on 03.10.2005 during evening hours and recorded his statement. PW-14 has denied having attached the uniform.

35. Coming to the medical evidence, PW-14 had referred PW-2 to the hospital for medical examination. He was examined by PW-11 Dr. Arvind Patil. The testimony of PW-11 vis-?-vis the medical certificate at Exh. 101 reveal that there was a

linear abrasion over right lateral aspect of neck at level of thyroid cartilage, which was 2.5 cms. in length. The doctor had opined that the age of said injury was of 4 to 5 days duration and could have been caused either by knife or cookary.

36. It is pertinent to note that though PW-2 had claimed that he was kidnapped at the point of gun and knife, he had not alleged that the accused had caused him any injury by means of knife or cookary. The victim had claimed that during his captivity from 29th September, 2005 to 03.10.2005 he was tied by a rope and his entire face was covered with tape. PW-11 Dr. Arvind Patil has deposed that a person who is tied with a rope would normally have weal mark on the body. He has deposed that he did not find any such weal marks on the body of PW-2. The medical evidence does not disclose any telltale marks of such long captivity and brutality. The medical evidence, therefore, does not support the prosecution case.

37. PW-2 had claimed that during his captivity, the accused had covered his entire face with a tape, leaving open his nose and eyes. He has admitted that on the day of his return, there were no marks of tape on his face. PW-2 had claimed that the accused had washed his face on the previous day. This explanation is also unbelievable as the accused were certainly not aware that PW-2 would be rescued or that he would escape on 03.10.2005. Hence, there was no reason for the accused to remove the tape and wash his face on the previous day, and or to ensure that the marks of tape were not visible.

38. It is also pertinent to note that PW-2 had returned home on 03.10.2005 and the police had recorded his statement on the same day. The evidence of PW-2 indicates that on the same day, he had taken the police to the room, wherein he was confined. For the reasons not known, the Investigating Officer had not drawn the panchanama of the said room on 03.10.2005 but had drawn the panchanama at Exh.65 on 05.10.2005 i.e. after the arrest of the accused and had allegedly attached some articles like ropes, tape books etc. from the said room. The prosecution has not explained the delay in recording the scene of offence panchanama. The unexplained delay in conducting the panchanama gives rise to the suspicion that the said panchanama at Exh.64 is fabricated.

39. The prosecution has also relied upon the panchanamas at Exh.63/64 and Exh. 158/159, under which a knife, cookary and a revolver were recovered pursuant to the disclosure statements made by Manoj and Kuldip. The witnesses to the recovery panchanama have not supported the case of the prosecution. Besides having disbelieved the evidence of PW-2, we are not inclined to rely upon the said circumstance of recovery of weapons.

40. On analyzing the entire evidence, we are of a view that the evidence adduced by the prosecution does not prove the charge of kidnapping and the demand for ransom. On the contrary the evidence of Nandan Bhakuni, the brother of accused Mandan Bhakuni, who was examined as a defence witness,

pursuant to the order dated 08.10.2012 indicates that his brother Madan had called him to the school to attend the parent teacher meet to see his progress report. He has deposed that he was unable to go to the school due to the heavy rains. He has deposed that the victim PW-2 Punit had come to his house at about 11.00 a.m. to 11.30 a.m. and when he had inquired with him as to why he had not returned home and whether his father had not attended the parent meet, PW-2 told him that he did not want to talk to his father. Nandan Bhakuni has deposed that he had left the house as his one of the friend had met with an accident. He has further stated that on 30.09.2005 his brother Madan had attended the school and on returning from the school, Madan had told him that PW-2 had not attended the school and that the teachers were inquiring about him and that his father had lodged a missing report.

41. This witness has further deposed that on 03.10.2005 while he was going to the flat of his maternal aunt at Pimpal Saudagar, he saw PW-2 at Nakhatenagar. He questioned PW-2 as to what he was doing and told him that his parents were searching for him. This witness has stated that the PW-2 had told him that his father had stopped giving him pocket money since he had fared badly in his examination and hence he had quarreled with his father and left the house and was residing with his friend. He has deposed that after much persuasion, PW-2 agreed to go home and thereafter he dropped him to his house.

42. As stated earlier, the evidence of PW-2 reveals that on 29.09.2005, only the parents of the students who had failed in examination were called to attend parent teacher meet. The fact that the parents of PW-2 were called to attend this meeting probabalizes the defence that PW-2 had faired badly in his examination. The subsequent indifferent and unnatural conduct of PW-1 and PW-2 also gives an indication that all was not well between the father and son. This fact further supports the defence that the victim had quarreled with his father and probabalizes the defence that the victim was not kidnapped but had himself left the house on his own. The accused are, therefore, entitled for benefit of doubt.

43. Under the circumstances and in view of discussion supra, in our considered view, the evidence adduced by the prosecution cannot form the basis for conviction. The learned trial Judge has ignored the material discrepancies in the evidence and in our considered view has erred in holding the accused guilty of the offence punishable under Section 364-A of the IPC. Under the circumstances and in view of the discussion supra, the appeals are allowed and the conviction and sentence of the appellants is hereby quashed and set aside and they are acquitted of the offence with which they were charged and convicted. Fine, if paid by the appellants be refunded to them. Since the appellants are in jail, they be released forthwith, if not required in any other case.