HIGH COURT OF ANDHRA PRADESH
Bench: Justices K Suresh Reddy and B V L N Chakravarthi
Date of Decision: 3rd April 2024

CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NOS. 2458, 2483, 2559, and 2570 OF 2018

Godugula Keshava …APPELLANT

VERSUS

State of Andhra Pradesh …RESPONDENT

Gorla Obulesu …APPELLANT

VERSUS

State of Andhra Pradesh …RESPONDENT

Kunchepu Ravi Kumar @ Ravi …APPELLANT

VERSUS

State of Andhra Pradesh …RESPONDENT

Syed Mahaboob Basha @ Ma Basha and Others …APPELLANTS

VERSUS

State of Andhra Pradesh …RESPONDENT

Legislation:
Sections 364-A, 342, 307, 506 of the Indian Penal Code (IPC)
Sections 222(1) of the Code of Criminal Procedure, 1973 (Cr.P.C.)
Indian Evidence Act, 1872

Subject: Criminal appeals arising out of convictions in a case involving kidnapping for ransom, wrongful confinement, and threat to cause death or hurt. The appeals focus on whether the prosecution sufficiently proved the charges under Section 364-A IPC against the appellants.

Headnotes:

Criminal Law – Conviction under Sections 364-A, 342, 307 r/w.511, 506(ii) IPC – Appeals partially allowed by High Court – Challenge against trial court's decision convicting accused for abduction for ransom, wrongful confinement, attempt to murder, and criminal intimidation – Court found prosecution failed to establish threat to cause death or hurt to secure ransom – Convictions for offences under Section 364-A set aside, replaced with convictions under Section 365 for some appellants – Insufficient evidence to uphold other charges due to lack of corroborative call data and proper identification of

recovered cash – Convictions under Sections 342 and 506(ii) IPC also set aside [Paras 1-43].

Evidence Evaluation – High Court examined prosecution's evidence including witness testimony, police report, and investigation records – Found discrepancies in recovery of ransom amount, lack of call data records, and inadequate corroboration of threats to cause death or hurt – Concluded essential ingredients of Section 364-A IPC not proved – Conviction under Section 365 IPC sustained for wrongful confinement with intent for ransom [Paras 22-38].

Decision – Appeals partially allowed – Held – Conviction and sentence for offences under Section 364-A IPC set aside – Conviction under Section 365 IPC affirmed for A-4, A-5, and A-6, sentencing them to rigorous imprisonment for seven years and fine – Convictions under Sections 342, 307 r/w.511, 506(ii) IPC not sustainable due to insufficient evidence – A-3, A-1, A-2, and A-7 acquitted – Appeal outcomes varied with specific instructions on release and refund of fines where applicable – Substantial sentences imposed to run concurrently [Paras 40-45].

Referred Cases:

- Ravi Dhinga v. State of Haryana (2022)
- Sunderbhai Ambalal Desai v. State of Gujarat AIR 2003 SC 638
- SK Ahmed v. State of Haryana (2023)
- Others as cited in the judgment

Representing Advocates:

T Diwakar Reddy, Metta Chandra Sekhar Rao, D Kodandarami Reddy for appellants
Public Prosecutor for respondent

COMMON JUDGMENT:

(Per Hon'ble Sri Justice B.V.L.N.Chakravarthi)

1. As all the four Criminal Appeals arise out of the same Sessions Case i.e., S.C.129/2012 on the file of II Addl.Sessions Judge, Kadapa at Proddutur, they are being disposed of by way of this common judgment.

2. Accused No.4 in S.C.129/2012 on the file of II Addl.Sessions Judge, Kadapa at Proddutur filed Crl.A.2458/2018, A-3 in S.C.129/2012 on the file of II Addl.Sessions Judge, Kadapa at Proddutur filed Crl.A.2483/2018, A-5 in S.C.129/2012 on the file of II Addl.Sessions Judge, Kadapa at Proddutur filed

Crl.A.2559/2018 and A-1, A-2, A-6 and A-7 in S.C.129/2012 on the file of II Addl.Sessions Judge, Kadapa at Proddutur filed Crl.A.2570/2018.

3. They along with A-8 were charged for the alleged offence punishable under sections 364-A, 342, 307 and 506 IPC in Cr.No.99/2011 of Yerraguntla Police Station.

4. During pendency of the trial, A-8 died and case against him was abated. A-1 to A-7 were tried by the learned II Asst. Sessions Judge under five charges. First charge is U/s.364-A IPC against A-3 to A-6, second charge is U/s.364-A IPC r/w.34 IPC against A-1 and A-2, third charge is 342 IPC against A-7 and A-8, fourth charge is U/s.307 r/w.511 IPC against A-3 to A-6 and the fifth charge is U/s.506 IPC against A-3 to A-6.

5. The substance of the charge is that on 16.06.2011 at about 10.30 a.m. while P.W-1 and A-1 was going in Bolero vehicle, A-3 to A-6 intercepted the said vehicle, and entered into the Bolero vehicle, sprinkled chilli powder in the eyes of P.W-1 and abducted him in the said car and took him to the house of A-8 and confined him there by keeping watch by A-7 and A-8, and also threatened P.W-1 demanding ransom of Rs.30,00,000/- from P.W-3, and thereby committed offence punishable under sections 364-A, 342, 307 r/w.511 IPC and 506 IPC.

6. After completion of trial, the learned II Addl.Sessions Judge convicted A-1, A-3 to A-6 for the offence U/s.364-A IPC and sentenced to suffer rigorous imprisonment for life, and also to pay fine of Rs.1,000/- (Rupees One Thousand only) each, in default, to suffer simple imprisonment for one month each. The learned II Addl.Sessions Judge also convicted A-2 and A-7 for the offence U/s.411 IPC and sentenced to suffer rigorous imprisonment for a period of three years each and to pay a fine of Rs.1,000/- (Rupees One Thousand only) each, in default, to suffer simple imprisonment for one month each. The learned II Addl.Sessions Judge further convicted A-4 to A-6 for the offence U/s.506(ii) IPC and sentenced to suffer rigorous imprisonment for seven years each and also to pay a fine of Rs.1,000/- (Rupees One Thousand only) each, in default, to suffer simple imprisonment for one month each. The substantial sentences imposed against the accused were directed to run concurrently.

7. The case of the prosecution as per evidence of the prosecution witnesses is as follows:

(a) A-1 is working as a driver for a Bolero Vehicle bearing No.AP 04 TB 5393 hired by L&T Company, Kadapa, arranged by A-3; P.W-1 is

working as Chief Engineering Management in L&T Company; A-1 is working under him as
driver.

(b) On 16.06.2011 P.W-1 started at Kadapa in the above Bolero vehicle driven by A-1; Sri P.Bala Chander (P.W-3) accompanied P.W-1 upto Kamalapuram, thereafter P.W-1 proceeded towards Mangapatnam for inspection work. He was returning from Kalamalla railway station and proceeding towards Mangapatnam along with A-1; the vehicle reached a place near Chilamkur village road at about 12.00/12.30 p.m.; when the vehicle crossing a culvert, a person came opposite causing obstruction to the vehicle; A-1 stopped the vehicle; immediately A-4 to A-6 and another person came to the vehicle, opened back door, two persons entered into the jeep, sat beside P.W-1;person who obstructed the movement of jeep came there from front side by the side door and sat back side of P.W-1; the people, who entered into the jeep from back door sprinkled chilli powder on the face of P.W-1; tied a towel covering face, pushed his head towards down side in the seat gap; tied his hands from back side; jeep proceeded to an isolated place; P.W-1 was confined in a house; they removed towel covering the face of P.W-1; they untied his hands; they provided water and asked him to clean the face; there after they informed him that they kidnapped P.W-1 for money and demanded Rs.30,00,000/-; then A-4 to A-6 beat him all over the body; removed gold chain and two gold rings from the person of P.W-1 and also taken away a purse containing Rs.5,000/-; they threatened P.W-1 stating that if he fails to arrange money as demanded by them, he will be killed; later, they collected mobile phone from P.W-1 and instructed P.W-1 to make a phone call to Sri T.Bala Chander (P.W-3); accordingly, P.W-1 made a call to P.W-3 intimating that he is sending A-1 and requested to hand over Rs.30,00,000/- and also not to inform the police; later the accused spoken with others through mobile phone.

(c) On the same day in the night, at about 09.30 p.m. they informed P.W-1 that it is not possible for P.W-3 to arrange money due to closure of bank and that he promised to arrange money on the next day; then A-4 to A-6 and another person informed P.W-1 that if P.W-3 fails to arrange money, they will kill P.W-1; later, they posted a differently abled person and a woman as guards to P.W-1 and locked the house from outside; next day A-4 to A-6 and another male person came to P.W-1; they spoke to office people of L&T Company over mobile phone; later, at about 12.00/12.30 p.m. he was informed that A-1 received cash at L&T Office and he is on the way, and he

will be set free; subsequently, at about 03.00/03.30 p.m. an auto came to the house; A-4 to A-6 made P.W-1 to board the auto and they travelled for some time and reached the main road; A-1 was waiting with a jeep; P.W-1 was directed to get down from the auto and boarded the jeep; accordingly, P.W-1 boarded the jeep and they set free P.W-1; P.W-1 and A-1 proceeded to the office; on the way A-1 made a phone call to P.W-3, intimating P.W-1 is sage and coming to the office; at about 08.00 p.m. they reached office at Kadapa; on the next day i.e., 18.06.2011 P.W-1 went to police station; police recorded his statement.

(d) On 17.06.2011 P.Subbaiah (P.W-2) and P.Bala Chander (P.W-3) went to the office of the Superintendent of Police, Kadapa; P.W-2 submitted Ex.P-1 report; Superintendent of Police advised them to go to Yerraguntla Police Station; accordingly, they visited Yerraguntla Police Station and presented Ex.P-1 report and Head Constable of Yerraguntla Police Station received Ex.P-1 report on 17.06.2011 at about 09.00 a.m. from P.W-2 and registered the same as a case in Cr.No.99/2011 for the offence U/s.364-A IPC and submitted original FIR (Ex.P-16) to the Judicial Magistrate of First Class, Kamalapuram and copies to all concerned.

(e) Inspector of Police B.Uamamaheswara Reddy (P.W-9) on receipt of copy of FIR, he went to Yerraguntla Police Station and took-up investigation; he examined and recorded statement of P.W-2; he visited scene of offence situated at Penikalapaduvanka and prepared rough sketch (Ex.P-17); on 18.06.2011 P.W-1 came to his office at 09.00 a.m.; he examined P.W-1 and recorded statements of P.W-1 and P.W-3.

(f) On 20.06.2011 at about 06.30 a.m. on receipt of information he went to Pamalur village to the house of A-1, found A-1 and A-2 and recorded their statements in the presence of mediators under cover of Ex.P-2 panchanama; he seized Rs.10,000/- from A-1, Rs.6,40,000/- from A-2; he also seized M.O-3 mobile from A-1; later, he found A-3, A-4 and A-5 and interrogated them separately; he seized cash of Rs.8,00,000/- from A-3, cash of Rs.5,00,000/- from A-4; he also seized a gold ring from A-4 apart from seizure of a cell phone from A-3; P.W-9 also seized Rs.2,00,000/- from A-5; the seizure proceedings were prepared in the presence of mediators; P.W-9 also seized cell phone from A-4 and A-5; on the same day, he also visited Karchukuntapalli village of Yerraguntla Mandal and visited the house of A-6, interrogated him and seized cash of Rs.6,75,000/- in Alfa suit case (M.O-8); he also seized one gold chain (M.O-1); P.W-9 also seized mobile phone

of A-6 (M.O-9) under the cover of Ex.P-6 panchanama; later, he produced the accused before the learned Judicial Magistrate of First Class for judicial custody.

(g) On 22.06.2011 at about 04.30 p.m. on information, he visited the house of A-8 situated in Kona Uppalapadu village and interrogated him; another person (A-7) was also present there; on their confession, he seized Rs.50,000/- from A-8 and Rs.1,25,000/- from A-7; he also seized one money purse from A-7 (M.O-10) belonging to P.W-1; A-8 is a differently abled person; he visited scene of offence and prepared Ex.P-18 rough sketch; on 23.06.2011 Inspector of Police presented a request for Test Identification Parade; on 24.06.2011 he examined P.W-2 and recorded his statement; he also examined P.W-6, P.W-7 and others and recorded their statements; after completion of investigation, he laid police report (charge sheet) against the accused.

8. During trial, 9 witnesses were examined for the prosecution as P.Ws-1 to 9 respectively, 18 documents were marked as Exs.P-1 to P-18 respectively, apart from M.Os-1 to 10.

9. The accused were examined U/s.313 Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.') with reference to the incriminating evidence appearing against them from the evidence for the prosecution. The accused denied the same, but did not choose to examine any witnesses for defence.

10. The learned II Additional Sessions Judge considering the evidence for the prosecution stated above, convicted the accused as stated above.

11. Challenging the judgment, the appeals came to be filed.

12. The learned counsel representing A-1, A-2, A-3, A-4, A-5, A-6 and A-7 would submit that it is a case of no evidence, but the learned trial Judge erroneously convicted the accused for various charges and sentenced them for imprisonment. They would further submit that the evidence came on record does not disclose anything incriminating to connect the accused with the alleged abduction or wrongful confinement of P.W-1 and there is no evidence came on record establishing that in pursuance of the alleged demand for ransom amount was paid to the accused. They would further argue that the evidence on record did not establish that the accused

threatened P.W-1 or any other person to cause death or hurt to P.W-1 or any other person to pay a ransom.

13. They would further submit that Ex.P-1 police report in the case presented by P.W-2 does not indicate anything that the accused threatening P.W-1 to cause death or hurt to him or to any other person in order to compel P.W-1 or any other person to pay a ransom; In Ex.P-1 report, it was alleged that on 16.06.2011 evening kidnappers made a call to mobile phone of P.W-3 threatening him that they will cause hurt or death to P.W-1, if money is not paid; and Ex.P-1 discloses a mobile number stating that the call was made from the said mobile phone; whereas, it is the evidence of P.W-9 i.e., Investigation Officer that his investigation does not disclose anything about the said mobile number, and therefore, there is no evidence on record to establish that the mobile number mentioned in Ex.P-1 relates to accused in the case.

14. The learned counsel for appellants/accused would further argued that the prosecution did not place on record any call data records belonging to mobile phone of P.W-1, P.W-3 or the accused to establish that P.W-1 spoke to P.W-3 at the instance of the accused at about 12.30 p.m. on 16.06.2011 or accused spoke to P.W-3 in the evening on 16.06.2011 or 17.06.2011;So far as the recovery of cash is concerned, P.W-4 deposed that Inspector of Police seized the cash from A-1, A-2, A-3, A-4, A-5, A-6 and A-8 under the cover of Ex.P-2, Ex.P-3, Ex.P-4, Ex.P-5, Ex.P-6 and Ex.P-7 respectively, but the prosecution during trial, did not place cash before the mediator or the Investigation Officer to identify the cash to establish that it was seized from the accused.

15. They would further submitted that P.W-3 deposed that he received the cash from the Magistrate towards interim custody; But there is no record placed before the Sessions Court to substantiate it; and the proceedings for return of the cash towards interim custody or the photographs/videographs taken at the time of return of cash, as per judgment of the Hon'ble Apex Court in the case of Sunderbhai Ambalal Desai Vs. State of Gujarat [1] are not placed before the Sessions Court, to enable the mediator or the Investigation Officer to identify the photographs or video graphs of the cash, as the cash recovered from the accused and returned to P.W-3 for interim custody;

[1] AIR 2003 SC 638

Therefore, the prosecution failed to prove the recovery of cash from any of the accused.

16. They would further submit that it is the case of the prosecution that as the money cannot be drawn directly from the account of L&T Company, it was transferred to the account of P.W-7; then P.W-7 withdrew cash of Rs.30,00,000/- and gave it to P.W-3; He handed over the cash to A-1; then A-1 handed over the same to other accused, and same cash was seized from the accused; as per the case of the prosecution, the cash was handed over to A-1 at about 03.00 p.m. on 17.06.2011, whereas the report to police was given at about 09.00 a.m; If it is true, the police would certainly monitor withdrawal of the cash from the bank and they will make a note of serial numbers of the currency released by the bank, and it will be recorded to enable the investigating agency to match the currency, seized from the accused later to buttress the case of the prosecution that the cash paid to the accused was later recovered from the accused; No numbers of the currency was noted in mediators reports drafted at the time of seizure; Therefore, failure to produce the cash at the time of trial would lead to a reasonable doubt that the story of the prosecution is not trustworthy or credible.

17. They would further contend that the learned trial Judge convicted A-2 and A-7 for the offence U/s.411 I.P.C though not charged, but acquitted the other accused on the same evidence for the said offence, without any reason; therefore, the conviction of A-2 and A-7 for the offence U/s.411 I.P.C. is not sustainable; in fact, there is no evidence on record to found any of the accused guilty for the offence U/s.364-A, 342, 307 r/w.511 I.P.C. or 506 I.P.C.

18. The learned counsel for appellants/accused vehemently argued that the offence U/s.364-A I.P.C., require, establishment of two ingredients. One is of abduction/kidnap and another is of threat to cause death or hurt with a demand to pay ransom; In the case on hand, the prosecution miserably failed to prove any of the ingredients; The learned counsel in support of their contention regarding requirements to establish the offence U/s.364-A I.P.C. relied on the judgment of the Hon'ble Apex Court in the case of Ravi Dhinga Vs. State of Haryana[2], the Hon'ble Apex Court held as follows:

[2] 2023 (6) SCC 76

“24. Most recently, this Court in SK Ahmed has emphasised that Section 364-A of the IPC has three stages or components, namely, i. kidnapping or abduction of a person and keeping them in detention;

ii. threat to cause death or hurt, and the use of kidnapping, abduction, or detention with a demand to pay the ransom; and iii. when the demand is not met, then causing death.

25. The relevant portions of the said judgement are extracted as under:

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

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

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

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

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

The first essential condition as incorporated in Section 364-A is “whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction”. The second condition begins with conjunction “and”. The second condition has also two parts i.e. (a) threatens to cause death or hurt to such person or (b) by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt.

Either part of above condition, if fulfilled, shall fulfil the second condition for offence. The third condition begins with the word “or” i.e. or causes hurt or death to such person in order to compel the Government or any foreign State or international inter-governmental organisation or any other person to do or abstain from doing any act or to pay a ransom. Third condition begins with the words “or causes hurt or death to such person in order to compel the

Government or any foreign State to do or abstain from doing any act or to pay a ransom". Section 364-A contains a heading "Kidnapping for ransom, etc." The kidnapping by a person to demand ransom is fully covered by Section 364-A.

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

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

15. The word "and" is used as conjunction. The use of word "or" is clearly distinctive. Both the words have been used for different purpose and object. Crawford on Interpretation of Law while dealing with the subject "disjunctive" and "conjunctive" words with regard to criminal statute made following statement:

"… The court should be extremely reluctant in a criminal statute to substitute disjunctive words for conjunctive words, and vice versa, if such action adversely affects the accused." xxx

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

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

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

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

Thus, after establishing first condition, one more condition has to be fulfilled since after first condition, word used is “and”. Thus, in addition to first condition either Condition (ii) or (iii) has to be proved, failing which conviction under Section 364- A cannot be sustained.”

19. Per contra, Sri S.Dushyanth Reddy, learned Addl. Public Prosecutor strenuously argued that the evidence on record beyond all reasonable doubt establish the offence U/s.364-A I.P.C. against A-1 and further, the particulars culled out from the evidence placed before the trial Court would also establish the offence U/s.342, 506(ii) I.P.C. and 307 r/w.511 I.P.C.

20. He would vehemently argue that the evidence of P.W-1 alone is sufficient to convict the accused for the offence U/s.364-A I.P.C., as his testimony before the learned trial Court would prove that the accused kidnapped him on the fateful day, while he was travelling in the jeep driven by A-1 and threatened him to cause death so as to compel him to pay the ransom, and his evidence was amply corroborated by the evidence of the company officials i.e., P.W-2 and P.W-3 and the prosecution successfully proved the recovery of tainted money from the accused through the evidence of P.W-4 corroborated by the evidence of P.W-9 Investigation Officer, and in that view of the matter, there are no grounds to interfere with the conviction and sentence imposed by the learned trial Judge.

21. In the light of above rival contentions, the point that would arise for determination in all the appeals is as under:-

“Whether the prosecution proved the guilt of the accused beyond all reasonable doubt?”

22. POINT:

We perused the evidence of P.Ws-1 to 9. The case of the prosecution from Ex.P-1 police report is that P.W-2 is an employee of L&T Company and he presented Ex.P-1 report to the police on 17.06.2011 at about 09.00 a.m.Ex.P-1 would disclose that it is dated 16.06.2011. the incident was narrated as if it happened on 16.06.2011 stating that on 16.06.2011 P.W-1

visited Mangapatnam and later, during noontime, they tried to contact him, but in-vain; Later, in the evening at about 05.20 p.m., P.W-1 made a phone call to P.W-3 i.e., accountant working in L&T Company and requested him to send Rs.20,00,000/- immediately; and switched off the phone. Therefore, the earliest version does not disclose anything about the kidnap/abduction or demand for ransom threatening to cause hurt or death. Ex.P-1 further speaks that the driver i.e., A-1 reached the office on that day at about 09.00 p.m. and intimated that some people obstructed the vehicle, sprinkled chilli powder and blind folded them and took them to a lonely place and detained P.W-1 with them and sent A-1 to the office to bring money to release P.W-1. This part of the report also is not making out any allegation of causing death or hurt to P.W-1 to compel P.W-1 or the officials of L&T Company to pay a ransom.

23. The third part in the report is regarding phone call received by P.W-3 at about 10.00 p.m. on the same day, demanding him to get ready with money, else, they will kill P.W-1.

24. Here, it is pertinent to note down that the report does not disclose anything as to who made the phone call, except using the word kidnapers, but a mobile number mentioned as 8978482743 stating that call was received from this number. As rightly argued by the learned counsel for the appellants/accused, P.W-9/Investigation Officer in crossexamination admitted that by the date of laying the police report (charge sheet), he could not get any information as to the details of the said number to connect the said number to the accused in the case. Therefore, as could be seen from the police version, there is no evidence came on record in the form of evidence, except the self-serving oral testimony of P.W-1 that the kidnappers i.e., any of the accused threatened him to cause hurt or death to compel P.W-1 or the officials of the L&T Company to meet the ransom.

25. It is pertinent to note down that case of the prosecution is that P.W-1 was forced to make a call to P.W-3 on 16.06.2011 at about 12.00/12.30 p.m. Admittedly, P.W-9 Investigation Officer did not collect the call data records pertaining to P.W-1 or P.W-3 to establish that P.W-1 made call to P.W-3, informing him that the kidnappers threatening him to cause hurt or death to compel P.W-3 or any other official to pay a ransom for release of P.W-1.

26. It is the case of the prosecution that in the evening the accused spoke to P.W-3 over mobile phone. As already stated above, call data records relating to mobile number of P.W-3 are not placed before the learned trial Judge to corroborate the oral testimony of P.W-3 and P.W-1.Therefore, the best evidence to corroborate the oral testimony of P.W-1 to P.W-3 is the call data records.

27. P.W-9/Investigation Officer in his evidence categorically admitted that he did not collect the call data records relating to P. Ws-1 to 3 and the accused. It is pertinent to note down that the Investigation Officer seized the cell phone/mobile phones of the accused and produced before the Court. Unfortunately, he did not take pain to collect call data records relating to mobile phones seized from the accused. No reason is assigned by the prosecution. The best evidence was not placed before the Court.

28. Section 114(g) of the Indian Evidence Act would speak that “evidence which could be and is not produced would if produced be unfavourable to the person who withholds it In the light of the foregoing discussion, we are of the considered opinion that the Investigation Officer purposefully for the reasons best known to him, did not place the call data records of P. Ws-1 to 3 and the accused. In those circumstances, we have no hesitation to draw an adverse inference against the prosecution that they suppressed the best evidence as it would go against their case if produced, and relied on oral testimony of P.W-1, with regard to alleged threats extended by any of the accused to cause death or hurt to the life to P.W-1 to compel officials of L&T Company to pay a ransom.

29. The Hon’ble Apex Court in the case of Ravi Dhinga Vs. State of Haryana held that to attract the offence U/s.364-A I.P.C., the prosecution must prove both the ingredients i.e., abduction as well as threat to cause death or hurt. The evidence of Investigation Officer would disclose that P.W-1 in his statement made before the police did not state that A-4 to A-6 entered into the jeep and A-4 to A-6 or the other person asked him to speak to P.W-3 in Hindi, and he also did not disclose the physical features of the kidnappers at the earliest point in time.

30. When coming to the recovery of cash from the accused, alleged to be paid to the accused as a ransom, the prosecution must establish that cash was

available, and it was made ready and handed over to A-1. The case of the prosecution is that though the amount is available in L&T Company account held with Axis Bank, the cash could not be withdrawn physically, directly from the account of L&T Company, and therefore, the amount was transferred to the account of P.W-7 and later he withdrew money from his account and the said amount was paid to A-1 as a ransom to release P.W-1. So, the transaction was made through transfer of money from one account to another and then withdrawal of the same, from the account of P.W-7. If it is true, it can be established by producing the bankers books i.e., statement of account maintained by the bank pertaining to L&T Company and P.W-7 for the date i.e., 17.06.2011. Unfortunately, the prosecution without any reason did not place the banker books i.e., statement of accounts before the Court to prove the said fact. The prosecution surprisingly relied on the oral testimony of the bank manager i.e., P.W-6 and P.W-7. So, again the prosecution withheld the best evidence from the Court.

31. At this juncture, we want to make out a point that as rightly argued by the learned counsel for the appellants/accused, by the time of withdrawal of the amount from the bank on 17.06.2011, Ex.P-1 was already presented to the police in the morning hours at 09.00 a.m. Therefore, withdrawal of money would be known to police. Any Investigation Officer in such circumstances will definitely visit the bank and make a note of serial numbers of the currency, to match the currency numbers at a later date, if the cash is recovered from the assailants. Surprisingly, no reason is forthcoming from P.W-9/Investigation Officer why he did not take care to make a note of currency numbers as well as denominations of the currency notes released by the bank.

32. As already discussed above, there is no dispute regarding the fact that the currency notes seized under various seizure panchanamas were not produced before the Sessions Judge during trial. Prosecution case is that the said cash was released towards interim custody to P.W-3. But except the oral statement of P.W-3, no other evidence was placed before the learned Sessions Judge.

33. Hon’ble Apex Court in the case of Sunderbhai Ambalal Desai Vs. State of Gujarat, on the procedure for releasing properties for interim custody held as under

'[10] To avoid a situation, in our view, powers under Section 451 Cr.P.C. should be exercised promptly and at the earliest.

Valuable Articles and Currency Notes

[11] With regard to valuable articles, such as, golden or silver ornaments or articles studded with precious stones, it is submitted that it is of no use to keep such articles in police custody for years till the trial is over. In our view, this submission requires to be accepted. In such cases, Magistrate should pass appropriate orders as contemplated under Section 451 Cr.P.C. at the earliest.

[12] For this purpose, if material on record indicates that such articles belong to the complainant at whose house theft, robbery or dacoity has taken place, then seized articles be handed over to the complainant after:-

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(1) preparing detailed proper panchnama of such articles;

(2) taking photographs of such articles and a bond that such articles would be produced if required at the time of trial; and

(3) after taking proper security.

[13] For this purpose, the Court may follow the procedure of recording such evidence, as it thinks necessary, as provided under Section 451 Cr.P.C. The bond and security should be taken so as to prevent the evidence being lost, altered or destroyed.The Court should see that photographs of such articles are attested or countersigned by the complainant, accused as well as by the person to whom the custody is handed over. Still however, it would be the function of the Court under Section 451 Cr.P.C. to impose any other appropriate condition.

[14] In case, where such articles are not handed over either to the complainant or to the person from whom such articles are seized or to its claimant, then the Court may direct that such articles be kept in bank lockers. Similarly, if articles are required to kept in police custody, it would be open to the SHO after preparing proper panchnama to keep such articles in a bank locker. In any case, such articles should be produced before the Magistrate within a week of their seizure. If required, the Court may direct that such articles be handed over back to the Investigating Officer for further

investigation and identification. However, in no set of circumstances, the Investigating Officer should keep such articles in custody for a longer period for the purpose of investigation and identification. For currency notes, similar procedure can be followed.

For this purpose, if material on record indicates that such articles belong to the complainant at whose house theft, robbery or dacoity has taken place, then seized articles be handed over to the complainant after:--

(1) preparing detailed proper panchnama of such articles;

(2) taking photographs of such articles and a bond that such articles would be produced if required at the time of trial; and

(3) after taking proper security.

[13] For this purpose, the Court may follow the procedure of recording such evidence, as it thinks necessary, as provided under Section 451 Cr.P.C. The bond and security should be taken so as to prevent the evidence being lost, altered or destroyed.The Court should see that photographs of such articles are attested or countersigned by the complainant, accused as well as by the person to whom the custody is handed over. Still however, it would be the function of the Court under Section 451 Cr.P.C. to impose any other appropriate condition. “

34. Therefore, when valuable property seized relates to house theft, robbery or dacoity etc is returned for interim custody to the complainant, the Magistrate/Court is expected to prepare a proper panchanama of such articles, take photographs and a bond that such articles would be produced if required at the time of trial and to prevent the evidence being lost, altered or destroyed. The Court should see that photographs of such articles are attested or countersigned by the complainant, accused as well as by the person to whom the custody is handed over. For currency notes, similar procedure can be followed.

35. In the case on hand, admittedly neither original cash seized or the panchanama proceedings, photographs/videographs prepared at the time of releasing the property for interim custody were placed before Sessions Court; to enable P.W-3 or the Investigation Officer to identify and match the cash as withdrawn from the bank, given to A-1 and recovered later from the

accused is one and the same. It is not the case of the prosecution no such proceedings, photographs and bond were taken to the cash released for interim custody. In those circumstances, therefore, we are not inclined to rely on the testimony of P.W-4 and the Investigation Officer/P.W-9 to accept the case of the prosecution that cash and other items recovered from the accused are nothing but the cash/property withdrew from the bank by P.W-7, given to the accused No.1, paid to the accused as ransom and later recovered from the accused.

36. We perused the evidence of P.W-1 in the light of arguments submitted by the learned Addl.Public Prosecutor. The evidence of P.W-1 would show that on 16.06.2011, he was returning to his office, reached the scene of offence during noon time. A-1 was driving the vehicle i.e., Bolero jeep travelled by P.W-1. One man suddenly came across the vehicle, and as a result, A-1 stopped the vehicle. Thereafter, A-4 to A-6 and another person came to the vehicle, and they opened back door of the car and two persons entered into the car, sat by the side of P.W-1 and blind folded him. Later, another person opened side door of the car and entered into the car, sat by the side of P.W-1. They lifted him to an isolated place and detained him in a house with an intention to wrongfully confine him in the house for a ransom. So, the particulars making out from the testimony of P.W-1 would disclose that A-4 to A-6 and another person kidnapped him i.e., P.W-1 with an intention to cause P.W-1 wrongfully confined in an isolated place to make a ransom. But the other particulars with regard to threatening him to cause hurt or death, but compel him or any person to make a ransom are not established beyond reasonable doubt, in the light of our discussion supra.

37. We do not find any reason to discard the evidence of P.W-1 to that extent. These particulars which are established from the evidence of P.W-1 would establish that A-4 to A-6 abducted him with an intention to cause P.W-1 to wrongful confinement in a house for ransom. Those particulars proved constitutes an offence U/s.365 I.P.C, though other particulars regard threatening him to cause hurt or death to compel him or any person to make ransom, but compel him or any person to make a ransom are not proved, in view of Section 222(1) Cr.P.C.

38. Section 222(1) Cr.P.C. would speak that “when a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved, but

the remaining particulars are not proved, he may be convicted of the minor offence, though he was not charged with it."

39. In that view of the matter, we are of the opinion that the accused No.4 to 6 be convicted for the offence U/s.365 I.P.C., being minor offence, though they were not charged with it, instead of 364-A I.P.C. We further hold that the prosecution failed to establish the rest of the charges against the other accused. To that extent, the judgment of the learned trial Court be modified. Accordingly, the point is answered.

40. In the result, the Criminal Appeal No.2458/2018 filed for A-4 is partly allowed, by setting aside the conviction and sentence recorded for the offence U/s.364-A I.P.C. Instead he is convicted U/s.365 I.P.C. and sentenced to suffer rigorous imprisonment for a period of seven years, and also to pay a fine of Rs.1,000/- (Rupees One Thousand only), in default, to suffer simple imprisonment for a period of one month.

41. The Criminal Appeal No.2483/2018 filed for A-3 is allowed, by setting aside the conviction and sentence recorded for the offence U/s.364-A I.P.C. A-3 shall be set at liberty forthwith, if he is not required to be detained in any other case or crime. The fine amount if any paid by A-3 shall be refunded to him.

42. The Criminal Appeal No.2559/2018 filed for A-5 is partly allowed, by setting aside the conviction and sentence recorded for the offence U/s.364-A I.P.C. Instead he is convicted U/s.365 I.P.C. and sentenced to suffer rigorous imprisonment for a period of seven years, and also to pay a fine of Rs.1,000/- (Rupees One Thousand only), in default, to suffer simple imprisonment for a period of one month.

43. The Criminal Appeal No.2570/2018 filed for A-1, A-2, A-6 and A-7 is partly allowed, by setting aside the conviction and sentence recorded against A-1 and A-6 for the offence U/s.364-A I.P.C., A-2 and A-7 for the offence U/s.411 I.P.C. Instead A-6 is convicted U/s.365 I.P.C. and sentenced to suffer rigorous imprisonment for a period of seven years, and also to pay a fine of Rs.1,000/- (Rupees One Thousand only), in default, to suffer simple imprisonment for a period of one month. A-1 shall be set at liberty forthwith, if he is not required to be detained in any other case or crime. The fine amount if any paid by A-1 shall be refunded to him.

44. So far as A-2 and A-7 are concerned, their bail bonds shall stand cancelled. The fine amount if any paid by them shall be refunded to them.

45. So far as A-4, A-5 and A-6 are concerned, the sentence of imprisonment already undergone by them shall be given set off U/s.428 Cr.P.C. Accordingly, the four appeals have been disposed of.

Miscellaneous petitions pending, if any, in the Criminal Appeals shall stand closed.