A SHYAM BABU & ORS.

v.

STATE OF HARYANA

(Criminal Appeal No. 308 of 2006)

NOVEMBER 11, 2008

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[D.K. JAIN AND V.S. SIRPURKAR, JJ.]

Penal Code, 1860; Ss. 323, 325, 342, 364A, 384 and 506 IPC r/s s.120B IPC:

C *Kidnapping for ransom – Kidnapping of 4½ years old son of complainant in her presence due to personal rivalry between A5 and father of the victim – Trial Court found all the accused persons guilty of committing offences u/ss.323, 325, 342,364A, 384 and 506 IPC r/w s.120B IPC and sentenced* D *them to life imprisonment – Affirmed by High Court – Correctness of – Held: Kidnapping was done in broad day light – Complainant had seen the accused persons clearly and correctly noted down the registration No. of the van used in the kidnapping of her son – She not only identified all the* E *accused persons except A5 in the Court but also deposed their individual action – Presence of injury on her body materially corroborated the prosecution story that she was not only over powered but also assaulted by the accused persons – Her evidence found sufficient to connect all the accused* F *persons in the crime – Nothing found in the cross-examination of PW2, an independent witness, which would shake the substratum of the prosecution story – Evidence of PW3, another independent witness, found trustworthy as he had seen A5 from distance of three paces while boarding the* G *van in which other 4 accused persons alongwith the kidnapped boy were sitting – Hence, prosecution evidence rightly believed by Courts below in convicting the accused persons – Evidence of witnesses – Trustworthiness.*

Kidnapping of young boy in the presence of mother for

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ransom with threats to life – Conviction u/s.364 or 364A – Held: Since ransom note clearly shows threat to the life of the child in case ransom money was not paid, accused liable to be convicted for committing the offence punishable u/s.364A IPC.

According to the prosecution, on the fateful day, one 'B' lodged an F.I.R. in the police station about kidnapping of her son from her residence by five persons. The accused persons allegedly took the child away in a white coloured Maruti Van. When she tried to stop them, they gave her fist blows and tied her hands and feet with cloth and bolted her inside the room while taking away her son in a Maruti Van, and while departing, they also threw a note inside the house demanding Rs.5 lacs as ransom money for the return of the child and also threatened to kill the child in case police was informed. Somehow, she managed to free herself and informed the police about the occurrence; that occurrence had also been witnessed by her neighbour 'R'. On the basis of her statement, F.I.R. was registered in the Police Station. Police investigated into the matter, seized the van, arrested the accused persons and recovered the child. Since accused persons A1, A2 and A3 refused to join the identification parade, their handwriting samples were taken for examination. After completion of investigation, charge-sheet was submitted by the Police against the accused persons for committing the offences punishable under Sections 325, 323, 342, 364A, 384 and 506 r/w s.120B IPC. Trial Court accepted the case of the prosecution in toto and convicted the accused persons A1, A2, A3, A4 and A5 for committing the offences punishable under Ss.323, 325, 342, 364-A 384 and 506 r/w s.120B IPC. Appeal filed by the convicts against the order of the trial Court was dismissed by the High Court. Hence the present appeal filed by all the convicts except A2.

On behalf of the appellants, it was inter alia

A contended that the identity of A-1 and A-3 was not established, while A-5 was implicated out of the earlier rivalry; that it was not possible for the mother of the victim to identify the accused, who had overpowered her; and that the evidence of mother of the victim, as also the B other witnesses, was not reliable at all.

Dismissing the appeal, the Court

HELD: 1.1. The complainant had identified A-4, who had shown knife to her child and gagged his mouth. She C identified A-2 as the other person. She also deposed that she had seen a Maruti Van bearing Registration No. DDD-436, parked nearby her house, when she had gone to pick up her child from the School and also at the time when she returned back along with her child. [Para 4] D [1029-D-E]

1.2. The complainant also referred to the ransom note, being left, in which the demand of five lacs rupees was made. She identified A-3 and A-1 as the persons, who were occupying the Maruti Van. She also asserted that E PW-2, her neighbour, had arrived at her house and that his house was only 4-5 houses away from her house. She also identified A-5 as the person living on the right side of their house. She was cross-examined extensively. However, the cross-examination was not at all effective, F as was rightly found by the Courts below. [Para 4] [1029-E-G]

1.3. The three accused, i.e., A-1, A-2 and A-3 had refused to join the identification parade. This fact was not disputed before any of the Courts below and even before G this Court. As regards the remaining accused persons A4 and A5 are concerned, their identity was also not challenged. It is significant to note that A-5 was a neighbour of the complainant, while the other, A-4, had thrown the ransom note. Ultimately, as per the H handwriting expert's report, it is obvious that the ransom

note was actually written by A-4. That fact was also not seriously disputed before this Court. If that is so, the evidence of the complainant was more than sufficient to connect all the accused. It is true that the complainant did not say anything about A-5. However, in respect of other four accused, she had not only identified them in the Court but also had graphically deposed about their individual actions. [Para 4] [1030-B-E]

1.4. The complainant had an opportunity to see the accused persons in broad day light. She was all along with accused persons for considerable time. She was not only overpowered, but was also injured, which injuries were also got proved by the prosecution. In fact, the presence of those injuries very materially corroborated the story told by her. [Para 5] [1030-E-F]

1.5. A criticism was raised that the complainant could not have seen two accused persons, sitting in the Van, because the distance was about 200 yards. Such possibility cannot even be imagined. Here was a mother, whose child was being taken away, who had not only noted the Registration Number of the Maruti Van correctly, but also described the same correctly and had also noted that the two persons were sitting and ultimately, that her son was taken away in that very Maruti Van. After scanning the evidence of this witness very carefully, this Court found that it is reliable and further, the Courts below committed no error in relying on that witness, at least insofar as, A-1, A-3 and A-4 are concerned. [Para 6] [1030-G-H; 1031-A, B]

2. PW-2 was a neighbour of the complainant. He also confirmed that he had heard some noise and saw the Maruti Van of White colour, bearing Registration No. DDD-436, which was parked in the street. He also saw the two persons, occupying the Van. He also correctly recognized A-1 and A-3 as the occupants of the Van. He

A also correctly stated that the other two accused, namely, A-2 and A-4 were holding the child. He also had raised the alarm and tried to catch, but could not. A criticism was made against the evidence of this person that it was not possible for him to see the whole incident. This Court has
B seen his cross-examination very carefully and found nothing in the cross-examination to disbelieve this witness. He has fully corroborated the evidence of the complainant. His statement was also recorded along with statement of the complainant. He had also seen the
C towel, the ransom note, as also the broken glass. He frankly admitted that he had not given the description of the accused to the police. Further, he stated that the description was already told by the complainant to police in his presence. Nothing found in the cross-examination
D of this independent witness, which would shake the substratum of the story in this case. [Para 7] [1031-B-F]

3. Evidence of PW-3 is of extreme importance. He was a witness, who had seen A-5, boarding the Van, bearing Registration No. DDD-436. This witness directly
E connects A-5 with the crime. He had seen him boarding the Van and at that time, other accused persons were also in the Van. There was absolutely no reason for A-5 to join the accused persons, immediately after the crime, when the kidnapped boy was also present in the Van. He
F had deposed about the enmity between A-5 and the father of the boy. He also confirmed that A-2 used to visit A-4, A-5 and the other accused were also seen by him a few days earlier. He was also cross-examined at length. However, the evidence of the witness remain unshaken.
G In fact, in the cross-examination, it had come that he had seen A-5 only from the distance of three paces, when he boarded the Van. Barring the few negative suggestions, nothing significant was asked to this witness. Nothing wrong is seen in the witness being believed by the Courts
H below. [Para 8] [1031-G-H; 1032-A-C]

4. PW-7 is the father of the kidnapped child, who was present when the child was retrieved by police. Even this witness had spoken about his rivalry with A-5. The said rivalry was on account of the Workshop of A-5, being in that residential area and that he had made many complaints against A5. He stated that his son died hardly 17 days after the incident on account of the shock that he had received. This witness was obviously not present, when the kidnapping took place, but was informed by PW-3 on telephone. This Court found nothing to disbelieve this witness. [Para 8] [1032-C-D]

5. PW-12, S.I., the Investigating Officer has given a correct picture of the investigation. Again, the cross-examination is completely lackluster, without any significant fact being brought on record. Hence, the prosecution evidence was rightly believed by the Courts below and the accused were rightly convicted. [Para 8] [1032-G-H; 1033-A]

6.1. The wording of s.364A IPC itself suggests that when kidnapping is done with the threat to cause death or hurt to the kidnapped person or gives a reasonable apprehension that some person may be done to death or hurt or compels any Government, any foreign State or international inter-governmental organization or any person to pay a ransom, the offence is complete. [Para 9] [1033-F]

6.2. In the instant case, the accused persons in a daring day light bid kidnapped a child, right in the presence of his mother and caused hurt to her, which was in the nature of grievous hurt and on the top of it, demanded a ransom of five lacs rupees in writing for the life of the child. The original note (Exh. PI) clearly brings out the threat to the life of the child in case the ransom money is not paid. In the considered opinion of this Court, there would be no other offence, but the one under

A **Section 364A IPC. The ransom note is proved to be in handwriting of A-4 and it was not his individual act, but as many as 3 appellants, who were together in whisking away the child from his mother. A-5 must be presumed to have the idea, because he immediately and knowingly**
B **joined the bandwagon. It is, therefore, clear that all the accused persons have, undoubtedly, committed the offence under Section 364A and the Courts below were right in convicting them for the offence, as also awarding them the life imprisonment. [Para 9] [1033-F-H; 1034-A-B]**

C CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 308 of 2006.

From the final Judgment and Order dated 1.3.2004 of the High Court of Punjab and Haryana at Chandigarh in Criminal
D Appeal No. 468-DB of 1999.

R.N. Kush, S.K. Sabharwal and Jitendra Singh for the Appellants.

Rajeev Gaur 'Naseem' and T.V. George for the
E Respondent.

The Judgment of the Court was delivered by

V.S. SIRPURKAR, J. 1. This Appeal arises out of the
F appellate judgment passed by Division Bench of High Court, dismissing the appeal filed by the appellants herein, confirming their conviction for offences under Sections 364-A, 325, 323, 384, 342 and 506 IPC all read with Section 120-B IPC. As many as five accused persons came to be tried by the Sessions Judge, Faridabad for the above mentioned offences
G and all of them were convicted. They were Accused No. 1 (A-1) Shyam Babu, Accused No. 2 (A-2) Brij Bhushan, Accused No. 3 (A-3) Revti Raman, Accused No. 4 (A-4) Chander Bhan and Accused No. 5 (A-5) Tejpal. Their conviction was upheld by the High Court also. However, before us, only Accused Nos.
H 1, 3, 4 and 5 have come up by way of an appeal. It is reported

that A-2 Brij Bhushan has not challenged his conviction, as well as the appellate order passed by the High Court. A

2. Prosecution case was that on 24.9.1997, at about 2.30 in the afternoon, Smt. Bhawna made a statement before S.I. Bishamber Dayal at Ambedkar Chowk, Ballabgarh. It was alleged that she was a house wife and her husband was working at Faridabad. She further stated that she had two children, namely, Swati, a daughter and Anchit, a son. She stated that her son Anchit was 4-½ years old and was studying in Nursery Class in D.A.V. School, Ballabgarh. She claimed that he used to go to School by School Bus, Route No. 1 at 7.30 a.m. and used to come back at 1.25 p.m. On that day, as usual, after her son returned by bus, she came to her house and saw two persons in the room behind the door, speaking local language. She had given their description also. She further stated that she had seen one white coloured Maruti Van bearing No. DDD-436, standing outside their house in which two other young men were sitting and they forcibly took away her son, who was still in his school uniform, and when she tried to stop them, they gave fist blows to her and one of them also threatened her with knife and while departing, they also threw a note inside the house demanding Rs.5 lacs as ransom money for the return of the child and also threatened that in case police was informed, they would kill the child. She claimed that her hands and feet were tied with cloth and she was bolted inside the room. She managed to free herself and after opening the door, had informed the police. She stated that occurrence had also been witnessed by her neighbour Raju Solanki and she could identify the culprits. After recording the statement, S.I. Bishamber Dayal sent the same to the police station with his endorsement, on the basis of which a formal FIR was registered in Police Station, City Ballabgarh at 2.40 p.m. The Special Report also reached the Judicial Magistrate, Faridabad on the same day at about 7 p.m. at his residence. B C D E F G

3. On the basis of this, the police sprang into action and H

A started the usual investigation by preparing the site plan and executing a spot panchanama. They found a towel, which was lying on the spot, as also, the ransom note Exh. PD. Bhawna, the mother was got examined by the Doctor. On the next day, the police reached house of Shyam Babu, A-1, where they B came to know that the said Maruti Van bearing No. DDD-436 was parked in a place at Nohra of Khichi. The said Van was seized. Thereafter, the S.H.O. S.I. Bishamber Dayal raided the sugar-cane fields of village Ranwari and heard the noise of the weeping of a child from the fields. PW-7 Udham Singh C identified the voice and recovered the child. The accused persons were not found there. They had obviously run away. Later, on 30th September 1997, A-2 Brij Bhushan and A-3 Revti Raman were arrested on being produced by PW Raghunath, while A-1 Shyam Babu was produced by one D Hukam Singh. By and by, all the accused came to be arrested. On 1.10.1997, S.I. Bishamber Dayal moved an application for identification of these accused, namely, Rewati Raman (A-3), Brij Bhushan (A-2) and Shyam Babu (A-1). However, these accused refused to join the identification parade and made statement on 1.10.1997 vide Exh. PQ. During the investigation, E A-2 Brij Bhushan agreed to discover a country-made pistol, which was recovered after executing the necessary documents, like disclosure statement and recovery memo, Exh. PR and PS respectively. A-3 Revti Raman also got recovered one spring actuated knife. It is thereafter that A-4 Chander Bhan and A-5 F Tajpal also came to be arrested. One of them was found with a knife, which was also seized. A-4 Chander Bhan and A-5 Tejpal gave their consent for giving the sample handwriting, which was taken from them, also the specimen handwriting of A-1 Shyam Babu was taken in Court. After the investigation, G the accused were charge sheeted. The plea of the accused was that of the false implication. The Trial Court, as well as, the High Court have accepted the prosecution case in toto.

4. Shri R.N. Kush, Learned Counsel, appearing on behalf H of the appellants, firstly, submitted that the identity of A-1 and

A-3 was not established, while A-5 Tejpal was implicated out of the earlier rivalry. He tried to feebly suggest that it was not possible for Bhawna to identify the accused, who had overpowered her. He also suggested that the said ransom note, which was allegedly written by one of the accused persons, though was in the custody of the police earlier, the police took unduly long time in sending it for the handwriting expert's examination. The Learned Counsel tried to suggest that the evidence of Bhawna, as also, the other witnesses was not reliable at all and had to be rejected, as such. We were taken through the evidence of Bhawna, who was cross-examined at length from time to time. In her evidence, she had narrated the whole story that after she returned back from the School along with her son, two young persons were found hiding and one of them started beating her and other overpowered her son Anchit. She also suggested that one of them showed knife to her child and gagged his mouth, as also her mouth. She identified A-4 Chander Bhan, who had shown knife to her child and gagged his mouth. She identified A-2 Brij Bhushan as the other person. She also deposed that she had seen Maruti Van bearing Registration No. DDD-436, parked nearby her house, when she had gone to pick up her child and also at the time when she returned back along with her child. She also referred to the ransom note, being left, in which the demand of 5 lacs of rupees was made. The witness also identified A-3 Rewti Raman and A-1 Shyam Babu as the persons, who were occupying the Maruti Van. She also asserted that PW-2 Raju Solanki had arrived at her house and that his house was only 4-5 houses away from her house. She also identified A-5 Tejpal as the person, who was their neighbour, living on the right side of their house. She was cross-examined extensively. However, the cross-examination is not at all effective, as was rightly found by the two Courts below. It was tried to feebly suggest that since the Maruti Van was 200 yards away, the witness could not have seen the two accused sitting in the Van. Some insignificant omissions have been brought in her examination, which are of no consequence. Very strangely, there is not a

A single question asked about the identification of any of the accused. Since at least three of the accused persons had refused to join the identification parade on the very next day of their arrest, it would speak volumes. The three accused, i.e., A-1 Shyam Babu, A-2 Brij Bhushan and A-3 Revti Raman had B refused to join the identification parade. This fact was not disputed before any of the Courts below and even before us. As regards the remaining accused persons are concerned, namely, Chander Bhan (A-4) and Tejpal (A-5), their identity was also not challenged. It is significant to note that A-5 Tejpal was C a neighbour of Bhawna, while the other had thrown the ransom note. Ultimately, as per the handwriting expert's report, it is obvious that the ransom note was actually written by A-4 Chander Bhan. That fact was also not seriously disputed before us. If that is so, the evidence of the lady was more than sufficient to connect all the accused. It is true that the lady did not say D anything about A-5 Tejpal. We will deal with the case of A-5 Tejpal at a later stage. However, in respect of the four accused here, out of whom three are appellants, it is clear that the lady had not only identified them in the Court, but also had graphically deposed about their individual actions. E

5. It must be noted that the lady had an opportunity to see the accused persons in broad day light. She was all along with accused persons for considerable time. She was not only overpowered, but was also injured, which injuries were also got F proved by the prosecution. In fact, the presence of those injuries very materially corroborated the story told by the witness Bhawna. Lastly, she was the mother and in her own presence, the child was forcibly taken away by the accused persons.

G 6. A criticism was raised that this lady could not have seen two accused persons, sitting in the Van, because the distance was about 200 yards. In our opinion, such possibility cannot even be imagined. Here was a mother, whose child was being taken away, who had noted the Registration Number of the Maruti Van correctly, had also described the same correctly and H

had also noted that the two persons were sitting and ultimately, that her son was taken away in that very Maruti Van. We have scanned the evidence of this witness very carefully and we find that it is reliable and further, the Courts below committed no error in relying on that witness, at least insofar as, A-1, A-3 and A-4 are concerned. A B

7. PW-2 Raju Solanki was a neighbour. He also confirmed that he had heard some noise and saw the Maruti Van of White colour, bearing Registration No. DDD-436, which was parked in the street. He also saw the two persons, occupying the Van. He also correctly recognized A-1 Shyam Babu and A-3 Revti Raman as the occupants of the Van. He also correctly stated that the other two accused, namely, A-2 Brij Bhushan and A-4 Chander Bhan were holding the child. He also had raised the alarm and tried to catch, but could not. A criticism was made against the evidence of this person that it was not possible for him to see the whole incident. We have seen his cross-examination very carefully and we found nothing in the cross-examination to disbelieve this witness. He has fully corroborated the evidence of Bhawna. His statement was also recorded along with Bhawna's statement. He had also seen the towel, the ransom note, as also the broken glass. He frankly admitted that he had not given the description of the accused to the police. Further, he stated that the description was already told by Bhawna to police in his presence. We find nothing in the cross-examination of this independent witness, which would shake the substratum of the story in this case. C D E F

8. Evidence of PW-3 Raj Kumar is of extreme importance. He was a witness, who had seen A-5 Tejpal, boarding the Van, bearing Registration No. DDD-436. This witness directly connects A-5 Tejpal with the crime. He had seen Tejpal boarding the Van and at that time, the other 4 accused persons were also in the Van. There was absolutely no reason for A-5 Tejpal to join the accused persons, immediately after the crime, when the kidnapped boy was also present in the Van. He had G H

A deposed about the enmity between A-5 Tejpal and the father of the boy Udham Singh. He also confirmed that A-2 Brij Bhushan used to visit A-4 Chander Bhan, A-5 Tejpal and the other accused were also seen by him a few days earlier. He was also cross-examined at length. However, the evidence of
B the witness remained unshaken. In fact, in the cross-examination, it had come that he had seen A-5 Tejpal only from the distance of three paces, when he boarded the Van. Barring the few negative suggestions, nothing significant was asked to this witness. We do not see anything wrong in the witness being
C believed by the Courts below. PW-7 is the father of the kidnapped child, who was present when the child was retrieved by police. Even this witness had spoken about his rivalry with A-5 Tejpal. The said rivalry was on account of the Workshop of Tejpal, being in that residential area and Udham Singh had
D made many complaints against the said Workshop. The witness stated that his son died hardly 17 days after the incident on account of the shock that he had received. This witness was obviously not present, when the kidnapping took place, but was informed by PW-3 Raj Kumar on telephone. We do not find anything to disbelieve this witness. We were also
E taken through the evidence of PW-12 S.I. Bishamber Dayal, who was the Investigating Officer. He had stated about the statement of Bhawna, having been made to him, recording of the First Information Report, finding the Maruti Van No. DDD-436, which was parked in the Nohra of Khichi, as also the
F recovery of the child. He had also stated about the arrest of the accused persons, as also the refusal on the part of the A-1, A-2 and A-3 to join the identification parade. He had spoken about the disclosure statements and recovery of pistol from A-2 Brij Bhushan and the knife from A-3 Revti Raman. He had
G also spoken about Ransom note, which was found in the house of Bhawna, the same being Exh. PD. In short, this witness has given a correct picture of the investigation. Again, the cross-examination is completely lackluster, without any significant fact being brought on record. In short, the prosecution evidence was
H rightly believed by the Courts below and the accused were

rightly convicted.

9. Shri Kush, Learned Counsel concentrated on the nature of the offence. According to him, the ingredients of Section 364A IPC were not proved in this case and at the most, the conviction could be under Section 364. Section 363 deals with the punishment for kidnapping, which offence is defined in Section 359. The punishment is seven years. Section 364 provides for kidnapping or abducting in order to murder, while Section 364A deals with kidnapping for ransom. The wording is as under:-

> "Kidnapping for ransom, etc. – Whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction and threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt, or causes hurt or death to such person in order to compel the Government or any foreign State or international inter-governmental 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."

The wording itself suggests that when kidnapping is done with the threat to cause death or hurt to the kidnapped person or gives a reasonable apprehension that some person may be done to death or hurt or compels any Government, any foreign State or international inter-governmental organization or any person to pay a ransom, the offence is complete. Here was a case, where the accused persons in a daring day light bid kidnapped a child, right in the presence of his mother and caused hurt to her, which was in the nature of grievous hurt and on the top of it, demanded a ransom of 5 lacs of rupees in writing for the life of the child. We have gone through the original note Exh. PD, which clearly brings out the threat to the life of the child in case the ransom money is not paid. In our considered opinion, there would be no other offence, but the

A one under Section 364A. The ransom note is proved to be in handwriting of A-4 Chander Bhan and it was not an individual act of Chander Bhan, but as many as 3 appellants, who were together in whisking away the child from his mother. A-5 Tejpal must be presumed to have the idea, because he immediately
B and knowingly joined the bandwagon. It is, therefore, clear that all the accused persons have, undoubtedly, committed the offence under Section 364A and the Courts below were right in convicting them for the offence, as also awarding them the life imprisonment for the same. We find no merit in the Appeal.
C The Appeal is dismissed.

S.K.S. Appeal dismissed.