

Suman Sood @ Kamal Jeet Kaur vs State Of Rajasthan on 14 May, 2007

Equivalent citations: AIR 2007 SUPREME COURT 2774, 2007 (5) SCC 634, 2007 AIR SCW 5013, 2007 (2) SCC(CRI) 637, 2007 (7) SCALE 312, (2007) 3 RECCRIR 119, (2007) 2 CURCRIR 479, (2007) 3 ALLCRIR 2963, (2007) 7 SCALE 312, (2007) SC CR R 1081, 2007 (2) ALD(CRL) 576, 2008 (1) ANDHLT(CRI) 200 SC

Author: C.K. Thakker

Bench: C.K. Thakker, P.K. Balasubramanyan

CASE NO.:

Appeal (crl.) 867 of 2006

PETITIONER:

SUMAN SOOD @ KAMAL JEET KAUR

RESPONDENT:

STATE OF RAJASTHAN

DATE OF JUDGMENT: 14/05/2007

BENCH:

C.K. THAKKER & P.K. BALASUBRAMANYAN

JUDGMENT:

J U D G M E N T WITH CRIMINAL APPEAL NO. 727 OF 2007 (@ S.L.P. (Criminal) No. 2965 of 2006) DAYA SINGH LAHORIYA @ RAJEEV SUDAN @ VINAY KUMAR ..Appellant VERSUS STATE OF RAJASTHAN ..Respondent C.K. Thakker, J.

1. Leave granted in S.L.P. (Crl.) No. 2965 of 2006.

2. Present criminal appeals are filed by Daya Singh Lahoriya @ Rajeev Sudan @ Vinay Kumar and Suman Sood @ Kamal Jeet Kaur @ Kanwaljit Kaur, husband and wife respectively against the judgment and order passed by the High Court of Judicature for Rajasthan (Jaipur Bench) dated March 20, 2006 in S.B. Criminal Appeal Nos. 1247 of 2004 and D.B. Criminal Appeal No. 11 of 2005 respectively.

3. By the said order, the High Court confirmed the order of conviction and sentence passed against Daya Singh for offences punishable under Sections 364A, 365, 343 read with 120B and 346 read with 120B Indian Penal Code (IPC). The said conviction was recorded by the Additional Sessions

Judge (Fast Track) Category 1, Jaipur on October 20, 2004 in Sessions Case No. 26 of 2003. So far as Suman Sood is concerned, she was convicted by the trial Court for offences punishable under Sections 365 read with 120B, 343 read with 120B and 346 read with 120B IPC. She was, however, acquitted for offences punishable under Section 364A and in the alternative under Sections 364A read with 120B IPC. Her challenge against conviction and sentence for offences punishable under Sections 365 read with 120B, 343 read with 120B and 346 read with 120B IPC was negated by the High Court. But her acquittal for offences punishable under Sections 364A read with 120B was set aside by the High Court in an appeal by the State and she was convicted for the said offence and was ordered to undergo imprisonment for life.

PROSECUTION CASE

4. To appreciate the controversy raised by the parties, few relevant facts may be stated.

5. It was the case of the prosecution that one Rajendra Mirdha, son of Shri Ram Niwas Mirdha was staying at 81-C, Azad Marg, C-Scheme, Jaipur. He used to regularly wake up at about 6.30/6.45 in the morning and to take walk for about an hour or an hour and a half. According to the prosecution, on February 17, 1995, as usual, he left his residence for a morning walk at about 7.00 a.m. He had hardly completed two or three rounds and when again he reached at the road for further rounds, he saw a white Maruti car and one man came out of it. The said man asked Rajendra Mirdha about the location of House No. 105 or 106. Before he could reply, he was pushed into the car and was taken away. There were three persons in the car having weapons. Rajendra Mirdha did not know why he was kidnapped. After some time, Mr. Mirdha was taken in one house. The kidnappers then told Mr. Mirdha that they were the members of the Khalistan Liberation Force (KLF). One of their members, Devendra Pal Singh Bhullar was arrested at the Indira Gandhi International Airport on the night of January 18-19, 1995 on his return to India after the German authorities declined to grant him asylum and the kidnappers wanted him to be released. It was also stated that the kidnappers had nothing against Rajendra Mirdha personally. It was also the case of the prosecution that at the relevant time, Shri Ram Niwas Mirdha, father of Rajendra Mirdha was heading Joint Parliamentary Committee, being a Chairman of the Committee. According to the kidnappers, Shri Ram Niwas Mirdha was thus an influential person and was in a position to get the said act done by the Government. According to the prosecution, PW 5 Udai Rani Mirdha, wife of Rajendra Mirdha received a telephonic call at about 8.40 a.m. from an unknown person who stated that Rajendra Mirdha had been made hostage and until and unless Devendra Pal Singh Bhullar was freed, they would not release Rajendra Mirdha. He further stated that neither Police should be informed nor the telephone be tapped. The caller also stated that he would again telephone Udai Rani Mirdha. Udai Rani informed the above incident and a call from unknown person to Harendra Mirdha, PW 29, younger brother of Rajendra Mirdha. Harendra Mirdha went to Ashok Nagar Police station and lodged First Information Report (FIR) about abduction of his elder brother Rajendra Mirdha. A case was registered as FIR No. 57 of 1995 (Ex.P-29) under Section 365 IPC and investigation started. During the investigation, according to the prosecution, it was revealed that accused Daya Singh, Suman Sood and other persons were involved in the abduction of Rajendra Mirdha. Necessary steps were, therefore, taken to arrest the accused. Daya Singh and Suman Sood were arrested from Minneapolis Airport, Minnesota, USA on August 3, 1995 while they were illegally trying to cross

over to Canada. The United States District Judge, Northern District of Texas, Fort Worth Division allowed the extradition of accused Daya Singh to India inter alia for offences punishable under Sections 343, 346, 353, 364A, 365, 420, 468, 471, 120A and 120B IPC as also for the offences punishable under Sections 4 and 5 of the Explosive Substances Act, 1908. Likewise, extradition of accused Suman Sood was allowed for offences punishable under Sections 343, 346, 353, 364A, 420, 468, 471, 120A and 120B IPC. It appears that after the accused were brought to India, prosecution was launched against them also for offences under the Terrorist and Disruptive Activities (Prevention) Act, 1987 ("TADA" for short). Since the order of extradition did not mention trial of offences under TADA, Daya Singh filed a Writ Petition in this Court by invoking Article 32 of the Constitution contending that the prosecution under TADA was without authority, power and jurisdiction and no prosecution could have been launched. This Court, considering the relevant provisions of the Extradition Act, 1962, in the light of the order of extradition held the contention well-founded and allowed the petition holding that no prosecution under TADA could have been instituted. The said decision was reported as *Daya Singh & Ors. v. Union of India*, (2001) 4 SCC 516 : JT 2001 (5) SCC 31. After the above decision, prosecution for offences under TADA was dropped, the case was transferred from the Designated Court, Ajmer under TADA to the Court of Sessions Judge, Jaipur City which was finally tried and decided by the Additional Sessions Judge (Fast Track), Category No.1, Jaipur and was registered as Sessions Case No. 26 of 2003.

DECISION OF THE TRIAL COURT

6. The prosecution examined 61 witnesses. Several documents were also produced on record. The parties were heard and finally on October 20, 2004, the trial Court recorded an order of conviction as also of sentence.

7. So far as Daya Singh is concerned, he was convicted and sentenced as under U/s. 364A IPC:

To suffer imprisonment for life and fine of Rs.500/- in default to further suffer simple imprisonment for six months.

U/s. 365 IPC:

To suffer imprisonment for seven years and fine of Rs.500/- in default to further suffer simple imprisonment for six months.

U/s. 343/120B IPC:

To suffer imprisonment for three years and fine of Rs.500/- in default to further suffer six months imprisonment.

U/s. 346/120B IPC:

To suffer imprisonment for two years.

The substantive sentences were ordered to run concurrently.

8. Accused Suman Sood was convicted as under U/s. 365/120B IPC:

To suffer imprisonment for seven years and fine of Rs.500/- in default to further suffer simple imprisonment for six months.

U/s. 343/120B IPC:

To suffer imprisonment for three years and fine of Rs.500/- in default to further suffer six months imprisonment.

U/s. 346/120B IPC:

To suffer imprisonment for two years.

DECISION OF HIGH COURT

9. Both husband and wife were aggrieved by the order of conviction and sentence and approached the High Court of Rajasthan. The State was also aggrieved by the order of acquittal of Suman Sood for offence under Section 364A, in the alternative under Section 364A read with Section 120B, IPC and preferred an appeal. As already noted earlier, appeals of both the accused were dismissed by the High Court while the appeal of State of Rajasthan against Suman Sood was allowed and she was convicted for an offence punishable under Section 364A read with Section 120B, IPC. The High Court also ordered that looking to the gravity and dastardly nature of acts and consequences, Daya Singh as well as Suman Sood "shall not be released from the prison unless they served out at least twenty years of imprisonment including the period already undergone by them".

APPEALS IN SUPREME COURT

10. The above orders have been challenged by the appellants-accused in this Court.

11. On August 21, 2006, leave was granted in appeal filed by Suman Sood. Printing was dispensed with and appeal was ordered to be heard on SLP Paper Books. Parties were directed to file additional documents. It appears that an application for bail was submitted by Suman Sood stating therein that she had undergone the sentence for which conviction had been recorded by the trial Court against her and she had to remain in jail because of the order of conviction recorded by the High Court for an offence punishable under Section 364A read with 120B, IPC. She, therefore, prayed that she be released on bail. The Court, however, instead of granting prayer of bail, directed the Registry to place the matter for final hearing. Daya Singh had also preferred an appeal against his conviction. On February 6, 2007, when the appeal of Suman Sood was called out for hearing, it was stated that Daya Singh was convicted by the trial Court as well as by the High Court and he had also filed an appeal, but it was at the stage of S.L.P. and notice was issued, but no leave was granted. It was further stated that judgment of the High Court was common in both the matters, but the

matter of Daya Singh was not placed on Board. The Court, therefore, directed the Registry to place the papers before the Hon'ble the Chief Justice of India for obtaining appropriate orders so that both the matters could be placed before one Bench. Now, all the matters have been placed for hearing before us.

SUBMISSIONS BY APPELLANTS

12. We have heard Mr. Sushil Kumar, Senior Advocate for Suman Sood, Ms. Kamini Jaiswal, Advocate for Daya Singh for the appellants-accused and Mr. Milind Kumar, Advocate for the respondent-State.

13. Learned Senior Advocate Mr. Sushil Kumar for Suman Sood and Ms. Kamini Jaiswal for Daya Singh contended that Extradition Treaty had been entered into between the United States of America and Great Britain in 1931. In the said Treaty, there was no reference of offence of kidnapping for ransom punishable under Section 364A, IPC. Prosecution and trial for offences under Section 364A and/or Section 364A read with Section 120B, IPC was, therefore, illegal, without jurisdiction and conviction is liable to be set aside. It was also urged that no case had been made out against the appellants for an offence punishable under Section 364A, IPC inasmuch as ingredients of Section 364A, IPC had not been established by the prosecution. No witness had stated that the accused had administered any threat or asked to pay any ransom for the release of victim Rajendra Mirdha. Fax messages received by Shri Ram Niwas Mirdha made no reference of ransom. Again, there was no evidence worth the name which would prove that Daya Singh was a member of KLF or he had any link with Bhullar. It was urged that identity of the accused was not established beyond doubt and the prosecution witnesses had admitted that photographs of accused were shown on Television and printed in Newspapers. Identification Parade, therefore, was mere farce and an empty formality. It was also not proved that House No. B-117, Model Town exclusively belonged to Daya Singh wherein Rajendra Mirdha was detained. Ownership of white Maruti car equally was not proved. There was no evidence as to conspiracy and both the Courts were wrong in convicting the appellants for the offences with which he was charged.

14. On behalf of Suman Sood, certain additional arguments were advanced. It was contended that extradition was not granted for an offence punishable under Section 365, IPC. She, therefore, could not have been prosecuted and tried nor could have been convicted for the said offence. Her conviction, hence, is liable to be quashed and set aside. It was also urged that when she was acquitted for an offence punishable under Section 364A, IPC and in the alternative for an offence punishable under Section 364A/120B, IPC, the High Court was clearly wrong in convicting her under Section 364A read with Section 120B, IPC. It was also urged that the High Court had ignored an important consideration that she was not an accused in Vaishali Nagar FIR No. 44 of 1995. In FIR No.84 of 1995 of Malviya Nagar, she was prosecuted along with her husband Daya Singh for offences punishable under Sections 420, 468, 471, IPC and also under Section 4 of the Explosive Substances Act, 1908, but the trial Court acquitted her observing that there was no evidence on the basis of which she could be convicted. Leave to Appeal against acquittal of Suman Sood was also dismissed by the High Court and the said decision has attained finality. In view of the above facts, even if it is held that her conviction for other offences is not illegal, the order of the High Court

setting aside acquittal for an offence punishable under Section 364A read with Section 120B, IPC deserves to be set aside.

SUBMISSIONS BY STATE

15. On behalf of the State, it was submitted that order of conviction and sentence recorded by the High Court needs no interference. Regarding extradition, it was stated that Extradition Treaty was of 1931. Section 364A, IPC was inserted in the statute book in the year 1993. Obviously, therefore, no reference was found of the said provision in the Treaty. But in the Extradition- Order, dated June 11, 1997, passed by the American Court, express reference was made to Section 364A, IPC and hence, no objection can be raised against trial of accused under the said provision.

16. Similarly, extradition of accused Daya Singh was also allowed for offences punishable under Sections 4 and 5 of the Explosive Substances Act, 1908. The trial of the accused, therefore, cannot be held to be unlawful or without legal sanction.

17. On merits, it was submitted that there was sufficient evidence of kidnapping and also of ransom, which was demand of release of Bhullar. The evidence established kidnapping, abduction and detention of Rajendra Mirdha in House No. B-117, Model Town, Ashok Nagar, Jaipur by Daya Singh. It was also proved that white Maruti car in which victim was taken, belonged to Daya Singh. It was, therefore, submitted that the appeals deserve to be dismissed by confirming the order of conviction and sentence passed by the High Court.

18. We have given our anxious and most thoughtful consideration to the rival submissions of both the sides. We have also perused the judgments of both the courts and have minutely gone through the evidence on record.

EXTRADITION OF ACCUSED

19. As to extradition, it may be stated that on December 22, 1931, a Treaty had been entered into between the United States of America and Great Britain. It provided reciprocal extradition of accused/convicts of any of the crimes or offences enumerated in Article 3. The said Article, inter alia included the following crimes/offences;

.

7. Kidnapping or false imprisonment . . .

9. abduction . . .

20. Forgery, etc. Article 7 reads thus;

A person surrendered can in no case be kept in custody or be brought to trial in the territories of the High Contracting Party to whom the surrender has been made for any other crime or offence, or on

account of any other matters, than those for which the extradition shall have taken place, until he has been restored or has had an opportunity of returning, to the territories of the High Contracting Party by whom he has been surrendered.

20. Article 14 of the Treaty expressly stated that His Britannic Majesty acceded to the Treaty on behalf of any of his Dominions named in the Treaty. It, inter alia included India.

21. The Extradition Treaty of 1931 continues to hold the field. In *Thirad v. Ferrandina*, 355 Fed Supp 1155, the Government of India sought the extradition of J, an Indian citizen and a resident alien in the USA. The allegation against J was that while serving in Indian Navy, he embezzled huge sum of money. Extradition of J was, therefore, demanded. J challenged the action on the ground that 1931 Treaty was between USA and Great Britain when India was a Dominion of Great Britain. In 1950, India became Republican State and the Treaty which was as British-India did not survive. The contention, however, was negated and extradition of J was granted.

22. In *Rosiline George v. Union of India*, (1994) 2 SCC 80 : JT 1993 (6) SC 51, this Court referring to leading decisions on the point held that it is well-settled legal proposition in International Law that a change in the form of Government of a contracting State would not put an end to its treaties. India, even under British Rule, had retained its personality as a State under International Law. It was a member of the United Nations in its own right. Grant of Independence in 1947 and status of Sovereign Republic in 1950 did not put an end to the treaties entered into by the British Government prior to August 15, 1947 or January 26, 1950 on behalf of India.

23. The Extradition Treaty between India and United States of America entered in the year 1931, therefore, holds the field, is subsisting and is operative.

24. Moreover, in the instant case, there is Final Judgment of Certification of Extraditability dated June 11, 1997, which was in the nature of judgment, order or decree, expressly granting extradition of Daya Singh and Suman Sood for various offences alleged to have been committed by them. Section 364A, IPC has been mentioned explicitly in the said judgment. Both these documents have been proved by PW 56 S.P. Khadagwat.

25. In fact, in the light of the order of extradition of Daya Singh for the offences specified in the extradition decree, a contention was raised by him in this Court that he could not be prosecuted for offences punishable under TADA, which contention had been upheld by this Court in *Daya Singh*.

26. In the operative part, the Court stated;

"In view of the aforesaid position in law, both on international law as well as the relevant statute in this country, we dispose of these cases with the conclusion that a fugitive brought into this country under an Extradition Decree can be tried only for the offences mentioned in the extradition decree and for no other offence and the Criminal Courts of this country will have no jurisdiction to try such fugitive for any other offence".

(emphasis supplied)

27. It, therefore, cannot be successfully contended that the appellants-accused could not have been prosecuted and tried for an offence punishable under Section 364A, IPC. The contention of the appellants, therefore, has no substance and must be rejected.

28. On behalf of Suman Sood, one more argument was advanced. It was contended that Extradition Order in her case did not refer to Section 365, IPC but both the Courts convicted her for the said offence under Section 365/120B, IPC which was illegal, unlawful and without authority of law. Her conviction and imposition of sentence for an offence punishable under Section 365 read with Section 120B, IPC, therefore, is liable to be set aside.

29. We find no substance in the said contention as well. It is no doubt true that Section 365, IPC had not been mentioned in the order of extradition. But as already seen earlier, Section 364A, IPC had been included in the decree. Now, it is well-settled that if the accused is charged for a higher offence and on the evidence led by the prosecution, the Court finds that the accused has not committed that offence but is equally satisfied that he has committed a lesser offence, then he can be convicted for such lesser offence. Thus, if A is charged with an offence of committing murder of B, and the Court finds that B has not committed murder as defined in Section 300, IPC but is convinced that B has committed an offence of culpable homicide not amounting to murder (as defined in Section 299, IPC), there is no bar on the Court in convicting B for the said offence and no grievance can be made by B against such conviction.

30. The same principle applies to extradition cases. Section 21 of the Extradition Act, 1962 as originally enacted read thus;

"Section 21: Accused or convicted person surrendered or returned by foreign State or Commonwealth country not to be tried for previous offence:- Whenever any person accused or convicted of an offence, which if committed in India, would be an extradition offence, is surrendered or returned by a foreign State or Commonwealth country, that person shall not, until he has been restored or has had an opportunity of returning to that State or country, be tried in India for an offence committed prior to the surrender or return, other than the extradition offence proved by the facts on which the surrender or return is based."

31. The section, however, was amended in 1993 by the Extradition (Amendment) Act, 1993 (Act 66 of 1993). The amended section now reads as under;

"Section 21 - Accused or convicted person surrendered or returned by foreign State not to be tried for certain offences. - Whenever any person accused or convicted of an offence, which, if committed in India would be an extradition offence, is surrendered or returned by a foreign State, such person shall not, until he has been restored or has had an opportunity of returning to that State, be tried in India for an offence other than-

(a) the extradition offence in relation to which he was surrendered or returned; or

(b) any lesser offence disclosed by the facts proved for the purposes of securing his surrender or return other than an offence in relation to which an order for his surrender or return could not be lawfully made; or

(c) the offence in respect of which the foreign State has given its consent."

(emphasis supplied)

32. It is, therefore, clear that the general principle of administration of criminal justice applicable and all throughout applied to Domestic or Municipal Law has also been extended to International Law or Law of Nations and to cases covered by Extradition-Treaties.

33. In Daya Singh, this Court dealing with amended Section 21 of the Extradition Act, stated;

"The provision of the aforesaid section places restrictions on the trial of the person extradited and it operates as a bar to the trial of the fugitive criminal for any other offence until the condition of restoration or opportunity to return is satisfied. Under the amended Act of 1993, therefore, a fugitive could be tried for any lesser offence, disclosed by the facts proved or even for the offence in respect of which the foreign State has given its consent. It thus, enables to try the fugitive for a lesser offence, without restoring him to the State or for any other offence, if the State concerned gives its consent".

(emphasis supplied)

34. Now, it cannot be disputed that an offence under Section 365, IPC is a lesser offence than the offence punishable under Section 364A, IPC. Since extradition of Suman Sood was allowed for a crime punishable with higher offence (Section 364A, IPC), her prosecution and trial for a lesser offence (Section 365, IPC) cannot be held to be without authority of law. The contention, therefore, has no force and is hereby rejected.

MERITS

35. Having disposed of preliminary objections raised by the appellants, let us now come to the merits of the matter.

DAYA SINGH LAHORIYA

36. So far as kidnapping of Rajendra Mirdha is concerned, it has been clearly established and cogently proved by prosecution evidence. In our opinion, the trial Court was right in relying upon testimony of PW 1 Prem Devi, maid servant of Rajendra Mirdha, PW 2 Rakesh Kumar, son of PW 1, PW 3 Hemram, Chef at the House of Rajendra Mirdha, PW 5 Udai Rani Mirdha, wife of Rajendra

Mirdha, PW 6 Kishore Singh, a neighbour of victim Rajendra Mirdha, who in his evidence stated that he saw a white Maruti car in that area on the previous night of February 16, 1995 at about 8.00 p.m., and most importantly, PW 9, victim Rajendra Mirdha himself. PW 29 Harendra Mirdha, real brother of Rajendra Mirdha who was informed by Udai Rani Mirdha about kidnapping of her husband Rajendra Mirdha and on the basis of the said information, Harendra Mirdha lodged a complaint. PW 50 Shri Ram Niwas Mirdha and PW 36 Hari Kishen also corroborated the incident of kidnapping of Rajendra Mirdha. The trial Court, in our opinion, considered the evidence of the witnesses in its proper perspective and came to the conclusion that Rajendra Mirdha was kidnapped. We see no infirmity in the prosecution evidence nor in the finding recorded by both the courts. Kidnapping of Rajendra Mirdha is thus clearly established.

37. It was contended by the learned counsel for the appellants that it was not proved beyond reasonable doubt that kidnapping of Rajendra Mirdha was for ransom or any demand was made by accused Daya Singh for release of Rajendra Mirdha. It may, however, be stated that it was the case of the prosecution from the very beginning that Rajendra Mirdha was kidnapped only to get Bhullar, a member of Khalistan Liberation Force (KLF) released and since Shri Ram Niwas Mirdha, father of victim Rajendra Mirdha was holding an important office of Chairman of Joint Parliamentary Committee, he could exercise his influence to get said Bhullar released. PW 5 Udai Rani Mirdha, in her evidence, clearly deposed that after her husband was kidnapped at about 7.00 a.m. on February 17, 1995, she received a phone call from kidnappers which was picked up by her. The caller told her that Rajendra Mirdha had been kidnapped by them. The caller also told Udai Rani to write down name of Bhullar who should be released by exercising influence by her father-in-law Shri Ram Niwas Mirdha. PW 9 Rajendra Mirdha also deposed that the kidnappers told him that they were the members of Khalistan Liberation Force (KLF) and wanted one of the members (Bhullar) to be released who had been arrested. PW 29 Harendra Mirdha corroborated the version of Udai Rani. PW 50 Shri Ram Niwas Mirdha also stated that he used to receive calls from kidnappers that Bhullar should be released else he would have to face serious consequences. The witness also deposed that the caller stated that the witness could even talk to the Prime Minister for release of Bhullar and the Prime Minister would not decline such request. It is true that PW 52 Rakesh Kumar, owner of the Fax shop at Rohtak deposed that one fax message was sent to Delhi while the other was sent to Chandigarh. It is also true that he expressed his inability to identify the accused as sender of fax messages. But the witness had been declared 'hostile' by the prosecution and while answering a question by the Public Prosecutor, the witness stated that he had correctly identified the person in jail who had sent fax messages but added that it was not Daya Singh. He stated that it was not true to say that he was refusing to identify the accused due to fear.

38. It is true that two fax messages (Ex. P-19 and P-20) sent by Rajendra Mirdha and received by Shri Ram Niwas Mirdha made no reference to any demand or ransom. In our judgment, however, the message had already been conveyed through a telephone call to Udai Rani Mirdha, wife of victim Rajendra Mirdha as also to Shri Ram Niwas Mirdha, father of Rajendra Mirdha. Obviously, therefore, the demand was clearly communicated for which Rajendra Mirdha was kidnapped. It, therefore, cannot be said that since nothing was mentioned in the fax message by victim Rajendra Mirdha, his kidnapping, abduction and detention was not for ransom.

39. From what is stated above, in our opinion, neither the trial Court nor the High Court has committed either an error of fact or an error of law in convicting accused Daya Singh for the offences punishable under Sections 365 as also 364A, IPC. So far Suman Sood is concerned, we will deal with her involvement in the case at an appropriate stage.

40. The evidence as to purchase of House No. B- 117, Model Town, Ashok Nagar, Jaipur and exclusive possession of the said house by the accused is established and prosecution evidence has been accepted by both the courts. Likewise, ownership of white Maruti car bearing Registration No. RJ-14 IC 2005 and possession thereof by the accused is equally proved. Nothing was shown to us how both the courts were wrong in relying upon the evidence and why such evidence should be discarded. We are, therefore, unable to accept the submission of the appellants that it was not proved that the accused were in possession of House No.B-117, Model Town or Maruti car in which victim Rajendra Mirdha was kidnapped did not belong to them.

41. Regarding identification of accused, both the courts have considered the evidence of prosecution witnesses and recorded a finding that identity of the accused was established beyond doubt. We are also satisfied that evidence of PW 9, victim Rajendra Mirdha was natural and inspired confidence. His evidence established that he was kidnapped in the morning of February 17, 1995 and he remained with the kidnappers up to the date of encounter on February 25, 1995, i.e. for eight-nine days. Obviously, therefore, his evidence was of extreme importance. It was believed by both the courts and we see nothing wrong in the approach of the courts below. It is true and admitted by the prosecution witnesses that the photographs of the accused were shown on television as also were published in newspapers. That, however, does not in any way adversely affect the prosecution, if otherwise the evidence of prosecution witnesses is reliable and the Court is satisfied as to identity of the accused. Even that ground, therefore, cannot take the case of the appellants further. It is thus proved beyond doubt that the accused had committed offences punishable under Section 343 read with 120B, IPC as also under Section 346 read with 120B, IPC.

42. At the time of hearing of appeals, a list was given by the learned counsel for the State that several cases had been registered against Daya Singh. The learned counsel for the accused, however, submitted that the list was not accurate and in most of the cases, either Daya Singh was not prosecuted or the prosecution had resulted in acquittal except in few cases where there was conviction or the proceedings were pending. In the final written submissions, the State Counsel clarified the status as regards all cases and it appears that the learned counsel appearing for Daya Singh was right. In some of the cases, there was no prosecution against the accused. In some other cases, the accused was acquitted except in few cases where either there was conviction or the matters were sub-judice. We are, however, deciding the present case in the light of evidence before the Court and express no opinion on other cases.

43. From the above discussion and findings recorded, in our considered opinion, neither the trial Court nor the High Court has committed any error in convicting appellant-accused Daya Singh for the offences punishable under Sections 365, 364A, 343/120B and 346/120B, IPC.

SUMAN SOOD

44. So far as Suman Sood is concerned, it may be stated that the trial Court did not convict her for any offence independently. She was convicted for offences punishable under Sections 365/120B, 343/120B and 346/120B, IPC.

CRIMINAL CONSPIRACY

45. The learned counsel for Suman Sood strenuously urged that there was no evidence against her as to criminal conspiracy. She was neither in the car in which Rajendra Mirdha was kidnapped nor one of the members of the 'kidnapping-operation' team. There is also no evidence to show that she was aware of the plan of other accused and was a part to such conspiracy. Even if the entire prosecution story is believed, it can be said that after Rajendra Mirdha was kidnapped and was taken to House No. B-117, Model Town, Ashok Nagar, Jaipur, she was found there. Now, it is the case of the prosecution that she was the wife of accused Daya Singh and, therefore, her presence in her own house with her husband was most natural. The said fact, without anything more, therefore, cannot connect her with the crime said to have been committed either by her husband or by someone else.

46. At the first blush, the argument appears to be attractive, but on closer scrutiny, we find no substance in it. Prosecution case is very clear on the point. According to witnesses, Suman Sood was all through out in House No.B-117, Model Town, where Rajendra Mirdha was kept. In fact, it was she who was looking after victim Rajendra Mirdha. She provided him food, medicine, etc. It is, therefore, difficult to believe that she was not aware of kidnapping of Rajendra Mirdha nor that she was unaware of the fact that the victim was kept under wrongful confinement in a manner which would indicate that confinement of Rajendra Mirdha was at a secret place.

47. True it is that there is no direct evidence to show that Suman Sood was a party to the conspiracy in kidnapping Rajendra Mirdha and in detaining him at House No.B-117, Model Town. But it is well settled that an inference as to conspiracy can be drawn from the surrounding circumstances inasmuch as normally, no direct evidence of conspiracy is available.

48. In Halsbury's Laws of England, (4th Edn.; Vol. 11; para 58); it has been stated;

"Conspiracy consists in the agreement of two or more persons to do an unlawful act, or to do a lawful act by unlawful means. It is an indication offence at common law, the punishment for which is imprisonment or fine or both in the discretion of the Court. The essence of the offence of conspiracy is the fact of combination by agreement. The agreement may be express or implied, or in part express and in part implied. The conspiracy arises and the offence is committed as soon as the agreement is made; and the offence continues to be committed so long as the combination persists, that is until the conspiratorial agreement is terminated by completion of its performance or by abandonment or frustration or however, it may be. The actus reus in a conspiracy is the agreement to execute the illegal conduct, not the execution of it. It is not enough that two or more persons pursued the same unlawful object at the same time or in the same place; it is necessary to show a meeting of minds, a consensus to effect an unlawful purpose. It is not, however, necessary that each

conspirator should have been in communication with every other."

49. In *Bhagwan Swarup v. State of Maharashtra*, (1964) 2 SCR 368 : AIR 1965 SC 682; this Court stated;

"The essence of conspiracy is, therefore, that there should be an agreement between persons to do one or other of the acts described in the section. The said agreement may be proved by direct evidence or may be inferred from acts and conduct of the parties. There is no difference between the mode of proof of the offence of conspiracy and that of any other offence; it can be established by direct evidence or by circumstantial evidence". (emphasis supplied)

50. In *Baburao Bajirao Patil v. State of Maharashtra*, (1971) 3 SCC 432, this Court observed that there is seldom, if ever, that direct evidence of conspiracy is forthcoming. Conspiracy from its very nature is conceived and hatched in complete secrecy, for otherwise the whole purpose would be frustrated.

51. In *Kehar Singh v. State (Delhi Administration)*, (1988) 3 SCC 609 : AIR 1988 SC 1883, Shetty, J. said;

"Generally, a conspiracy is hatched in secrecy and it may be difficult to adduce direct evidence of the same. The prosecution will often rely on evidence of acts of various parties to infer that they were done in reference to their common intention. The prosecution will also more often rely upon circumstantial evidence. The conspiracy can be undoubtedly proved by such evidence direct or circumstantial. But the Court must enquire whether the two persons are independently pursuing the same and or they have come together to the pursuit of the unlawful object. The former does not render them conspirators, but the latter is. It is, however, essential that the offence of conspiracy requires some kind of physical manifestation of agreement. The express agreement, however, need not be proved. Nor actual meeting of two persons is necessary. Nor it is necessary to prove the actual words of communication. The evidence as to transmission of thoughts sharing the unlawful design may be sufficient".

52. In *Nazir Khan v. State of Delhi*, (2003) 8 SCC 461 : AIR 2003 SC 4427 : JT 2003 (Supp) 1 SC 200, this Court observed;

"Privacy and secrecy are more characteristics of a conspiracy, than of a loud discussion in an elevated place open to public view. Direct evidence in proof of a conspiracy is seldom available, offence of conspiracy can be proved by either direct or circumstantial evidence. It is not always possible to give affirmative evidence about the date of the formation of the criminal conspiracy, about the persons who took part in the formation of the conspiracy, about the object, which the objectors set before themselves as the object of conspiracy, and about the manner in which the object of

conspiracy is to be carried out, all this is necessarily a matter of inference".

53. Keeping in view the principles laid down in the above decisions, if we consider the case of Suman Sood, it is clear that an inference drawn by both the Courts as to criminal conspiracy by her cannot be held ill-founded. From the prosecution evidence, it is amply proved that Rajendra Mirdha had been kidnapped by Daya Singh and his 'companions'. He was to be kept at a secret place. Suman Sood was very much aware of the said fact. In fact, she was all throughout keeping watch on the victim. So much so that she used to give food, medicine, etc. since victim Rajendra Mirdha was not keeping good health. In the facts and circumstances of the case, therefore, in our considered view, both the courts were right in convicting Suman Sood for offences punishable under Sections 365 read with 120B, 343 read with 120B and 346 read with 120B, IPC. We find no infirmity in the reasoning or conclusion of the courts below and see no ground to interfere with the said finding.

KIDNAPPING FOR RANSOM

54. We are, however, of the view that the High Court was not right in reversing acquittal of Suman Sood for an offence punishable under Section 364A/120B, IPC. Section 364A relates to kidnapping for ransom. Let us consider the nature and ambit of an offence of kidnapping for ransom.

55. Offences of kidnapping and abduction were included in the Indian Penal Code in 1860 when the Code was enacted. An offence of kidnapping for ransom, however, did not find place then. It was only in 1993 that by Act 42 of 1993, Section 364A was inserted. The offence is serious in nature and punishment prescribed for the crime is death sentence or imprisonment for life and also of payment of fine.

56. Section 364A reads thus:

364A. 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 159[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, shall be punishable with death, or imprisonment for life, and shall also be liable to fine.

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.

[see also Malleshi v. State of Karnataka, (2004) 8 SCC 95]

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

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

means "to hold someone captive and demand payment for his release". (Concise Oxford English Dictionary, 2002; p.1186).

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

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

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

63. In the present case, there is no evidence at all direct or indirect to connect Suman Sood with kidnapping of Rajendra Mirdha for ransom. Admittedly, she was not a member of the party in the Maruti car in which Rajendra Mirdha was kidnapped. It is not even an allegation of the prosecution that Suman Sood had at any occasion made demand for release of Bhullar or she was present when such telephone calls were made to family members of Rajendra Mirdha (Udai Rani Mirdha, wife of Rajendra Mirdha or Shri Ram Niwas Mirdha, father of Rajendra Mirdha). There is nothing to show that Suman Sood was a member of Khalistan Liberation Force (KLF). There is also no evidence to show that Suman Sood was even knowing Bhullar or was interested in his release. PW 9 Rajendra Mirdha admittedly remained in House No. B-117, Model Town where Suman Sood was present for about eight-nine days from February 17, 1995 to February 25, 1995. Rajendra Mirdha nowhere stated in his deposition that during the entire period, Suman Sood had told him that he was kidnapped and kept there so that one of the members of Khalistan Liberation Force (KLF) should be released. We have upheld her conviction for offences punishable under Sections 365/120B, 343/120B and 346/120B, IPC keeping in view the fact that Rejendra Mirdha was kidnapped by Daya Singh and was kept at a secret place (House No. B-117) and Suman Sood was staying in the house and was aware that Rajendra Mirdha was kidnapped by her husband and was kept at secret place. But there is no iota of evidence to connect Suman Sood with ransom and the alleged demand of accused Daya Singh for release of Bhullar.

ACQUITTAL BY TRIAL COURT

64. According to the trial Court, the prosecution had failed to prove charge against Suman Sood for an offence punishable under Section 364A or 364A read with 120B, IPC 'beyond reasonable doubt' inasmuch as no reliable evidence had been placed on record from which it could be said to have been established that Suman Sood was also a part of 'pressurize tactics' or had terrorized to victim or his family members to get Devendra Pal Singh Bhullar released in lieu of Rajendra Mirdha. The trial Court, therefore, held that she was entitled to benefit of doubt.

65. In the facts and circumstances in their totality, by recording such finding, the trial Court has neither committed an error of fact nor an error of law.

66. As noted in earlier part of the judgment, Suman Sood is the wife of accused Daya Singh. It was, therefore, natural that she was staying with her husband in House No.B-117, Model Town and merely on that ground, it cannot be held that she was in 'continued association' and involved as a co-conspirator in criminal conspiracy with Daya Singh in kidnapping of Rajendra Mirdha and in keeping the victim in House No.B-117. The Courts below, however, held her guilty for offences punishable under Sections 365/120B, 343/120B and 346/120B, IPC and we have upheld the said conviction as according to us, both the Courts were right in drawing an inference that she must be presumed to be aware of kidnapping of Rajendra Mirdha and in detaining him. She was all throughout present in the said house and was very well aware that the victim had been kidnapped and was kept at a secret place. Because of these circumstances, we have negated the argument of the learned counsel for Suman Sood and held that the ratio laid down in State (NCT) of Delhi v. Navjot Sandhu @ Afsan Guru, (2005) 11 SCC 600 : JT 2005 (7) SC 1 would not apply wherein wife of the accused was acquitted by this Court.

67. That, however, does not mean that Suman Sood was also a part of conspiracy in kidnapping for ransom. No witness has directly or even indirectly deposed about ransom by Suman Sood. The learned advocate appearing for the respondent-State also could not point out anything from which it can be said that she had committed an offence punishable under Section 364A read with Section 120B, IPC.

68. It was, therefore, submitted by the learned counsel appearing for Suman Sood that the trial Court was wholly justified in acquitting her for an offence for kidnapping for ransom and no other view was possible. But even if it is assumed for the sake of argument that the other view was possible, it is settled law that in case two views are possible and the trial Court has acquitted the accused, the High Court would not interfere with such order of acquittal.

69. In this connection, reliance was placed on a recent decision of this Court in Chandrappa & Ors. v. State of Karnataka, JT 2007 (3) SC 316 : (2007) 3 Scale

90. Considering the relevant provisions of the Code of Criminal Procedure, 1898 and of 1973 and referring to leading decisions of the Privy Council as well as of this Court, one of us (C.K. Thakker, J.) stated;

"From the above decisions, in our considered view, the following general principles regarding powers of appellate Court while dealing with an appeal against an order of acquittal emerge;

(1) An appellate Court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded;

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and of law; (3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasize the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.

(4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court".

70. On the facts and in the circumstances in its entirety and considering the evidence as a whole, it cannot be said that by acquitting Suman Sood for offences punishable under Section 364A read with 120B, IPC, the trial Court had acted illegally or unlawfully. The High Court, therefore, ought not to have set aside the finding of acquittal of accused Suman Sood for an offence under Section 364A read with 120B, IPC. To that extent, therefore, the order of conviction and sentence recorded by the High Court deserves to be set aside.

FINAL ORDER

71. For the aforesaid reasons, the appeal filed by Daya Singh deserves to be dismissed and is, accordingly, dismissed and the order of conviction and sentence recorded against him by the trial Court and confirmed by the High Court is upheld.

72. So far as accused Suman Sood is concerned, an order of conviction and sentence recorded by the trial Court and upheld by the High Court for offences punishable under Sections 365/120B,

343/120B and 346/120B, IPC is confirmed and upheld. Her conviction and order of sentence for offence punishable under Section 364A read with 120B, IPC passed by the High Court, however, is set aside and her acquittal for the said offence recorded by the trial Court is restored.

73. Appeals are accordingly disposed of.