IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL NO. 1694 of 2005
With
R/CRIMINAL APPEAL NO. 1952 of 2005
With
R/CRIMINAL APPEAL NO. 1953 of 2005
With
R/CRIMINAL APPEAL NO. 376 of 2005

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE ILESH J. VORA

and

HONOURABLE MR.JUSTICE P. M. RAVAL

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Approved for Reporting	Yes	No

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RAVINDRA @ GUDDU SONIRAM KHUSHWAL
Versus
STATE OF GUJARAT

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Appearance:
MR AM PAREKH(562) for the Appellant(s) No. 1
MR PRANAV DHAGAT APP for the Respondent

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CORAM: **HONOURABLE MR. JUSTICE ILESH J. VORA**
and
HONOURABLE MR.JUSTICE P. M. RAVAL

Date : 29/09/2025

COMMON ORAL JUDGMENT
(PER : HONOURABLE MR. JUSTICE ILESH J. VORA)

1. Since, the facts of the case and issue involved in all these appeals are identical and arise out of the same judgment, all appeals are taken up together and are being disposed of by this common judgment.

2. The appellant accused Ravindra @ Guddu Sonuram Khushwal and co-accused (A1 to A4), in furtherance of their common intention, as a pre-planned, decided to extort money from the innocent persons of Ahmedabad and as a part of modus-operandi, they used to kidnap the persons, and after keeping them under confinement, caused voluntary injuries to the persons and after undressed them, they took photographs for blackmailing and in order to satisfy their lust, performed unnatural sex with them.

In these background facts, in the month of August, 2001, three different FIRs namely (i) I. CR No. 198 of 2001 (complainant – Jiya Ulhaq Gulam Mauddin), (ii) I. CR No. 201 of 2001 (complainant – Vitthal Parmar), (iii) I.CR No. 203 of 2001 (complainant – Natvar Vaghela), came to be registered with Karanj Police Station, Ahmedabad for the offences punishable under Sections 364A, 365, 367, 377, 342, 323, 384 of IPC. All three complaints were registered against unknown persons for the alleged act of kidnapping for ransom, wrongful confinement and kidnapping with an intent to cause injuries to the persons and act of unnatural sex and extortion.

During the course of investigation, the involvement of 5 accused namely – (i) Manoj @ Yogesh Joshi, (ii) Anil Morarilal Dube, (iii) Rajiv @ Raju @ Sharmaji Suresh Joshi, (iv) Binesh Sathwara, (v) Ravindra @ Guddu Soniram Khuswal was revealed. The accused Nos. A1 to A4 came to be arrested. The

victims as referred above, identified the accused in the test identification parade. The photographs and personal belongings of the complainant seized and recovered at the instance of accused as well as the vehicle used in the commission of crime also seized by the police. The accused A4 Mr. Sathvara was running the office of Anti Corruption Movement at the Odhav area of Ahmedabad and under the garb of anti-corruption movement, he along with co-accused kidnapped the innocent persons and blackmailed them for financial benefits. The victims, who lodged the FIRs, were treated by the Civil Hospital, Ahmedabad and treatment case papers were also being obtained by the police. The accused A5 – the appellant herein Ravindra Khushwal, was declared absconding and therefore, after completion of the investigation, the IO of the case, filed chargesheets against A1 to A4 before the Magisterial Court at Ahmedabad and cases being exclusively triable by the Court of Sessions, committed to the City Sessions Court at Ahmedabad and same being registered as Sessions Case Nos. 9 of 2002, 10 of 2002 and 11 of 2002. The learned Sessions Court after framing the charges against Nos. A1 to A4, proceeded to record the evidence and after closure of the evidence of prosecution and hearing the parties, the trial Court, vide its judgment and order dated 21.07.2003, held guilty the A1 to A4 for the offences punishable under Sections 365, 367, 342, 384, 377, 323 and sentenced to undergo maximum 5 years imprisonment with fine.

The appellant accused No. 5 Ravindra Khushwal, pending the trial of co-accused was arrested on 09.10.2002 by the Karanj Police, Ahmedabad in relation to the aforesaid three FIRs allegedly registered at the instance of three individual complainants, who were victims of the alleged atrocities. The Karanj Police, during the course of investigation, held test identification parade of A5 – appellant herein wherein, the victims had identified the him. The police after completion of the investigation against appellant herein - A5, filed supplementary chargesheet for the offences as referred above and after committal the cases to the Sessions Court at Ahmedabad, it was registered as Sessions Case No. 152 of 2003, 153 of 2003 and 154 of 2003. The charges were framed against the accused.

The learned APP of the case submitted an application under Section 219 of the Cr.P.C, for trying the accused in one trial. The trial Court by allowing the said application, passed an order to record the evidence in Sessions Case No. 152 of 2003.

3. We deem it to refer the factual aspect of each case.

(A) PW:1 Jiya Ulhaq Gulam Mayuddin (I. CR No. 198 of 2001 – Sessions Case No. 152 of 2003)

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Admittedly, the witness was serving in the State Bank of India at its branch at Ahmedabad and before the incident, they came into contact with A1 Manoj Joshi. According to his case,

the accused A1 got acquainted with him as he was interested to avail the bank loan with the help of the witness. He was taken to the place of the incident by A2 Anil Dubey and the accused five in person after kidnapping, wrongfully confined him and after undressed him, he had been assaulted by kicks and fists blows as well as by using lathi and belt and thereafter, the accused had performed unnatural sex with him and took his photographs of blackmailing and then, taken away the cash amount of Rs.22,000/- and other personal belongings. The injury certificate Exhs.45 and 46 show that there were 22 simple injuries in the nature of bruise and abrasion and he was examined by Dr. Parikh on 30.08.2001. The another certificate of V.S. Hospital shows that PW:1 was having fracture of 5th right metatarsal. In such circumstances, it is proved and established that PW:1 had sustained injuries on 29.08.2001 for which the FIR came to be filed on 30.08.2001.

(B) Vitthal Parmar (PW:2) (I. CR No. 201 of 2001 – Sessions Case No. 153 of 2003).

The witness was dashed with the vehicle bike allegedly driven by the accused and thereafter, the another accused came at the place and he was taken to the place of the incident and after his kidnapping, he was wrongfully confined there by the accused and was beaten with hockey and his photographs also, after making him undressed being taken by the accused and the matter ultimately settled with the agreement that he will pay

Rs.20,000/- and out of Rs.20,000/-, he had paid Rs.10,000/- and thereafter, he had been letting go. The injury certificate of V.S. Hospital shows that there was a fracture of 5th metatarsal on his right leg and swelling on the left foot and had taken treatment on 07.09.2001 and before that, he lodged an FIR on 05.09.2001, whereas the incident occurred on 28.08.2001.

(C) Natvar Vaghela (PW:3) (I.CR No. 203 of 2001 – Sessions Case No. 154 of 2003).

The victim was kidnapped on 24.08.2001 and was illegally confined by the accused at the place of the incident and after undressed him, he severely injured by the accused and then, unnatural sex being performed upon him and also his photographs for the purpose of blackmailing being taken by the accused and asked to pay Rs.5,000/- by the accused and when he assured for the payment, he had been letting him to go. The incident reported to the police on 06.09.2001.

(D) All the victims i.e. PWs:1 to 3 have identified the accused in Test Identification Parade.

(E) The I.O. - J.R. Raval, whose testimony recorded in the earlier sessions cases, has seized the personal belongings to the victims including the nude photographs of them and vehicles of the accused, allegedly used in the commission of the crime.

4. In order to prove the charges, the prosecution adduced the following oral and documentary evidence in support of its case:

Oral Evidence in Sessions Case Nos. 152, 153, 154 of 2003

PW 1 – Exh.14	Ziyaulhaq Gulamyudin Pirzi, Complainant
PW 2 – Exh.16	Vitthalbhai@ Vinubhai Nathabhai Parmar, Complainant
PW 3 – Exh.17	Natvarbhai Laljibhai Vaghela, Complainant
PW 4 – Exh.19	Mohammadyunus Abbasbhai Mannsuri, Executive Magistrate

Documentary Evidence in Sessions Case Nos. 152, 153, 154 of 2003

Exh.15	Complaint of Ziyaulhaq Gulamyudin Pirzi
Exh.26	Complaint of Vitthalbhai@ Vinubhai Parmar
Exh.18	Complaint of Natvarbhai Laljibhai Vaghela
Exh.27	Panchnama of scene of offence by complainant no.1
Exh.28	Panchnama of scene of offence by complainant no.2
Exh.29	Panchnama of scene of offence by complainant no.3
Exh.30	Panchnama of Motorcycle Hero Honda GJ01/CI/2396
Exh.31	Panchnama of Hockey Stick used
Exh.32	Panchnama of Caps, Handkerchief, and slippers of accused
Exh.33	Panchnama of Sticks, Pipe, and leather belt used by

	accused
Exh.34	Panchnama of recovery of cash Rs.21,900/- and naked photographs
Exh.35	Panchnama of naked photographs-6 from residence of Rajiv
Exh.36	Panchnama of naked photographs-8 from residence of Binesh
Exh.37	Panchnama of naked photographs-8 from residence of Anil
Exh.38	Panchnama of Motorcycle Bajaj GJ01/BH/3835
Exh.39	Panchnama of tiffin box, spectales, plastic thread and diary of complainant
Exh.40	Panchnama of clothes of Ziyaulhaq
Exh.41	Panchnama of clothes of Natwarbhai
Exh.43	Panchnama of clothes of accused
Exh.45	Civil hospital certificate of Ziyaulhaq
Exh.46	Vadilal hospital medical cet=rtificate of Ziyaulhaq
Exh.47	FSL Yadi
Exh.48	Receipt of article no.6 by FSL
Exh.49	Receipt of article no.36 by FSL
Exh.50	FSL Forwarding letter
Exh.51	FSL Forwarding letter
Exh.52	Forwarding of article no.22 to FSL
Exh.53	Serological report

Exh.54	FSL Yadi
Exh.55	Receipt of article no.22 by FSL
Exh.56	Report of article no.36 FSL
Exh.57	Serological report
Exh.58	FSL Forwarding letter
Exh.59	Report of article no.6 FSL
Exh.60	VS Hospital certificate of complainant Vitthalbhai
Exh.61	Civil Hospital case papers of complainant Ziyaulhaq

5. After closure of the prosecution evidence, the accused was questioned under Section 313 of Cr.P.C. to which he stated that he has been falsely implicated in the offence and he was innocent.

6. After hearing the respective parties and upon appreciation of evidence, the trial court came to a conclusion that, the prosecution has succeeded in proving the charge against the accused – appellant and further held that, the appellant accused with the common intention and in connivance with co-accused, had participated in the alleged act of kidnapping, wrongful confinement, act of unnatural sex and extortion and accordingly, the appellant has been convicted and sentenced for the offences punishable under Sections 364A, 365, 367, 377, 342, 323 and 384 of IPC. The appellant has been convicted and sentenced in all three Sessions Cases and particulars thereof are stated to be as under:

Ravindra@ Guddu Soniram Khushwaha Sessions Case No. 152/03

Conviction under Section	Punishment	Fine	In default of fine
364A r/w 34 and 114 IPC	RI for 5 years	Rs.1,000/-	RI for 3 months
365 r/w 34 and 114 IPC	RI for 5 years	Rs.2,000/-	RI for 3 months
367 r/w 34 and 114 IPC	RI for 1 year	-	-
377 r/w 34 and 114 IPC	RI for 5 years	Rs.1,000/-	RI for 3 months
342 r/w 34 and 114 IPC	RI for 1 month	-	-
323 r/w 34 and 114 IPC	RI for 1 month	-	-
384 r/w 34 and 114 IPC	RI for 1 year	Rs.1,000/-	RI for 3 months

Ravindra@ Guddu Soniram Khushwaha Sessions Case No. 153/03

Conviction under Section	Punishment
364A r/w 34 and 114 IPC	RI for 5 years
365 r/w 34 and 114 IPC	RI for 5 years
342 r/w 34 and 114 IPC	RI for 1 month

323 r/w 34 and 114 IPC	RI for 1 month
384 r/w 34 and 114 IPC	RI for 1 year

Ravindra@ Guddu Soniram Khushwaha Sessions Case No. 154/03

Conviction under Section	**Punishment**
364A r/w 34 and 114 IPC	RI for 5 years
365 r/w 34 and 114 IPC	RI for 5 years
367 r/w 34 and 114 IPC	RI for 1 year
377 r/w 34 and 114 IPC	RI for 5 years
342 r/w 34 and 114 IPC	RI for 1 month
323 r/w 34 and 114 IPC	RI for 1 month

7. Being dissatisfied with the judgment of conviction and sentence passed in three different Sessions Cases as referred above, the appellant A5 has come up with present Criminal Appeals.

8. Mr. A.M. Parekh, learned counsel appearing for the appellant accused, while assailing the conviction and order of sentence, has made the following submissions:

(i) That the judgment of conviction and order of sentence is erroneous and being rendered in utter disregard of the settled principle of criminal jurisprudence and appreciation of evidence.

The trial court failed to appreciate the oral as well as documentary evidence in its true prospective and mechanically, on the basis of conjuncture and surmises, convicted the appellant;

(ii) That the appellant accused was not known to the complainants PW-1, PW-2 and PW3. The offences alleged to have been committed on 20.08.2001, 24.08.2001 and 29.08.2001, whereas, the appellant accused came to be arrested on 09.10.2001. In the FIRs, no any identification marks or physical description of appellant accused being disclosed. In such circumstances, the evidence of test identification parade, is become doubtful and the mandatory procedure had not been followed by the Executive Magistrate while conducting TI Parade. Thus, the testimonies of eye witnesses, identifying the accused in the court, without any corroboration cannot be termed to be reliable and truthful, as such their evidence does not inspire confidence. Thus, the identity of the accused is not proved and evidence thereof, is of not in sterling quality.

(iii) That the FIR allegedly lodged by the different victims came to be registered on different dates and there was a delay in lodging the FIRs for which no satisfactory explanation being given by the witnesses which create a doubt on its veracity and truthfulness of its contents as well as prosecution case;

(iv) That, there is no evidence to prove vicarious liability as provided under Section 34 of the IPC, which says that, when the criminal act is done by several persons, in furtherance of the common intention of all, each of such persons, is liable for that act in the same manner, as if it were done by accused alone. In the facts of the present case, different roles assigned to accused; to attract Section 34 of the IPC, the prosecution is under obligation to establish that their existed common intention, which required pre-arranged plan and conscious meeting of mind of the persons participating in the act to bring a positive result. In the present case, upon careful examination of the oral evidence, the common intention amongst the accused for positive result, has not been established and the essential ingredient of sharing the common intention and meeting of mind are missing in the facts of the present case and therefore, the conviction with the aid of Section 34 read with Section 114 rendered by the trial Court, is not sustainable in law.

(v) The testimonies of the victims – PW-1 to PW-3 are not wholly reliable and trust worthy. The place of offence is situated in the industrial area of Ahmedabad and having regard to the time of the offence, the independent witnesses though available, could have been examined by the police, but somehow, the witnesses of the neighbouring industrial shed were not cited as witnesses. The offence was committed in the dark hours. The medical evidence of each of the victims are contradictory to the oral

version. In such circumstances, the sole testimonies of three victims, without corroboration cannot be acceptable, trustworthy and reliable.

(vi) That, the trial court went wrong in convicting the appellant A5 under Section 364A of the IPC; that the A1 to A4 had been prosecuted and tried for the offence under Section 364A of the IPC; the testimonies of the victims are almost similar in nature and allegations with regard to kidnapping for ransom being also alleged against A1 to A4; despite of this, the trial Court has acquitted A1 to A4 of the charges under Section 364A; in such circumstances, where co-accused have been acquitted on the same set of evidence, it is unsafe to convict the A5 – appellant accused herein for the same charge in the absence of independent cogent and stronger evidence against him. Even otherwise, there is no distinguishing evidence available against the appellant accused to convict him under Section 364A of the IPC; the second reason assailing the conviction under Section 364A is that the ingredients of Section 364A are not satisfied at all and there is no evidence for demanding ransom from any of the family members of the victim.

(vii) That there is no evidence against the appellant – accused to prove the act of wrongful confinement, extortion, kidnapping or abducting with intent to wrongfully confine the victims to satisfy their lust and therefore when the prosecution failed to establish

the necessary ingredients of the different sections with which the accused were charged, the judgment of conviction and order of sentence is not sustainable in eye of law.

9. In such circumstances referred to above, Mr. Ashok Parekh, learned advocate has submitted that, the court below was not justified in convicting the appellant accused on the sole testimonies of the victims and in view of the legal infirmities, as pointed out, the prosecution miserably failed to prove the charges against the appellant beyond reasonable doubt and thus, he prayed that, there being merit in these appeals and same may be allowed and judgment of conviction and order of sentence be set aside and appellant may be acquitted of all the charges.

10. On the other hand, Mr. Pranav Dhagat, learned State Counsel vehemently opposed the appeals. He would submit that the victims as referred, are injured witnesses and their presence at the place as well as the manner in which the accused kidnapped and keeping in wrongful confinement for the purpose of ransom, caused injuries on their body, and took their photographs and did unnatural sex would establish and prove that, the accused with their common intention has a pre-plan, kidnapped the victims and got positive result after confining them. The version of the complainants being injured witnesses, are truthful and reliable and corroborated by medical evidence on record. The photographs taken by the accused also recovered. In such circumstances, the

prosecution has successfully proved the charges against the appellant accused beyond reasonable doubt. The trial Court has not committed any mistake or error either on facts or on law while examining the evidence on record and therefore, there being no merits in the appeals and same may be dismissed.

11. Mr. Pranav Dhagat, learned APP while assailing the judgment of conviction and order of sentence, has submitted that, the necessary ingredients to prove the offence under Section 364A are made out and the trial Court while sentencing the accused, ignored sentence part, because the minimum sentence for the offence punishable under Section 364A of IPC is life imprisonment, whereas, the trial Court has awarded 5 years imprisonment, which is contrary to the prescribed sentence in the act and therefore, interference is required in the sentence awarded under Section 364A of the Act and thus, he prayed that the enhancement appeal on this count may be allowed. On the other hand, while opposing the enhancement appeal, Mr. Parekh learned advocate, has submitted that, when the ingredients of Section 364A are not attracted and there is no evidence to prove the charge, the question does not arise to enhance the sentence.

12. Before adverting to the submissions, we deem it fit to refer the evidence in detailed:

(1) Jiya Ulhaq Gulam Mayuddin (PW-1). In chief-examination, the witness has stated that on 29.08.2001, he came to his Bank's Head Office situated at Lal Darwaja, Ahmedabad and after taking material for examination at about 5-30 pm when he was standing near the city bus stand, near Apna Bazar, A1 Manoj Joshi met him and at that time, the appellant herein was introduced by A1 as his friend. The witness has further stated that after taking break-fast nearby area, A1 proposed him that the appellant accused Guddu will drop you at your house and relying on the words of A1, he sat on the bike as a pillion and instead taking him at Kalupur area, the appellant accused took him at the place of incident i.e. industrial shed situated at Odhav area. The witness has further stated that at that time he was carrying one hand bag, wherein, he kept Rs.22,000/- cash amount, tiffin box and other necessary papers. The witness has further stated that, the accused herein taken him inside the shed and his bag, which he carried was took by him and kept in the other side of the shed. The witness has further stated that, in the shed, A2, A3 and A4 were also accompanied to A1 and A2 and after sometime, they forcefully asked him for oral sex and thereafter, he was beaten up by the accused persons and they attempted to do unnatural sex with him and then he was beaten up severely on his right leg as well as on both the eyes and backside of body. The accused had demanded an amount of ransom and took his signature on blank papers and also took his nude photos for blackmailing and extortion. The witness has further stated that, after his assurance to pay the ransom amount on Monday, he was

permitted to leave the place and was dropped by A3 nearby at his house. The witness has further stated that, due to severe injuries, after reaching the home, he went to V.S. Hospital for treatment and found that, the amount, which was lying in the bag and other personal things being taken away by the accused. The witness has further stated that on the next day of incident, he approached the Karanj Police Station, where he disclosed the complaint (Exh.15). The witness has identified the accused in the court.

In the cross-examination, it was asked that the appellant accused have did not perform any oral or unnatural sex with him, but the said suggestion has been denied by the witness. The witness in the cross-examination explained that why instead of going police station, he went to his house. In the cross-examination on the question of visibility in the shed, the witness has clarified that, there was an electric light and it was on. The witness has also stated that prior to the incident, he was not knowing the appellant accused Guddu.

(2) Vitthalbhai @ Vinubhai Nathabhai Parmar (PW-2). The incident of the victim was arose on 20.08.2001. On the day of incident, the witness came to District Panchayat Office situated at Lal Darwaja to meet his relatives. The witness has stated in his chief-examination that after meeting, he left the place at about 4-30 pm and was on the way to his house and he was on his foot and while reaching the office of Congress Party, he was hit by one motor-

bike, as a result, he fell on the road and due to said hitting, he sustained severe injuries on his left leg. The witness has further stated that, the rider of the bike offered him for medical treatment and during the conversation with him, the another bike rider came at the place and after seeing his situation, he had started to scolding the rider of the bike which had caused the accident. The witness has further stated that he was taken by both the bike riders near the tea spot and thereafter, by giving lift in the bike, he was taken to place of incident, where, he had saw other three persons. The witness has further stated that, the persons, who found in the shed, were having hockey in their hands and on seeing him, they started to beat him and thereafter he compelled to undress himself and taken into office of the shed, where his photographs were being taken for the purpose of blackmailing. The witness has further stated that the accused had demanded Rs.50,000/- money from him and it was settled into Rs.20,000/-. The witness has further stated that before the said demand, he was compelled to sit in the chair and tide with the rope and again given a blow on his both the legs by hockey, which had caused the fracture injury in his right leg. The witness has further stated that the fifth person was speaking in Hindi language and stated that he is running the movement of Anti-corruption Office and asked him to suggest some persons who are indulged in corrupt practice. The witness has further stated that he was kept in the shed upto 4-00 o'clock morning. The witness has further stated that, he was allowed to go at the house of his relatives, accompanied by the accused persons,

where he had took Rs.10,000/- and paid to the accused and thereafter he was released by the accused. The witness has further stated that, he took the city bus from Bapunagar to travel to his residence and after reaching the home, he went to private hospital for treatment and after 7 to 8 days, he made a complaint with the Karanj Police Station. The witness has clarified that, he was scared and he was threatened by the accused for dire consequences if he lodged the FIR and therefore, there was a delay in lodging the FIR. The witness is identified by the appellant – accused Guddu stating that it was who had given a blow by hockey and further clarified that, when he was summoned for deposition against 4 accused, the present appellant was not there in the trial.

In the cross-examination, the testimony of the witness is not shaken so far as role attributable to appellant is concerned. The witness has further stated that, before the incident, he never met to the appellant accused. The witness admits that, in the complaint he has not give the features and other particulars of the accused. The witness on the issue of light, clarified that, in the shed, the faces of the accused could have been seen. It is stated that, before the doctor, he has not stated the facts of the incident and history to the effect of accidental injuries was being given. The witness has denied that due to accident, he sustained the injuries and the accused did not have caused injuries to him by weapon hockey. It is also denied by the witness that, at the

instance of police, he identified the accused in the court.

(3) Natvarbhai Vaghela (PW:3). The witness in his chief examination, has stated that on 24.08.2001, the services of City Bus, was not available because of strike, and in that circumstances, he was given lift by rider of bike from the bus stand point and he was taken by him in the area of Odhav and was kept in the industrial shed where other persons were also there. The witness has further stated that the accused persons undressed him and took his snaps and beaten him up and thereafter, they performed unnatural sex upon him. The witness is identifying the accused sitting in the court stating that, the accused had also participated in commission of offence with other accused. The witness has further stated that the accused took his signature on blank papers and took assurance of payment of money, which they had demanded and thereafter, one of the accused dropped him on Odhav Road from where he went to his house and thereafter due to fear, he went to Rajkot for some days and after returning back to Ahmedabad, he lodged an FIR. The witness has also produced the treatment case papers of civil and private hospital and also admitted that his testimony was recorded earlier in the matter of co-accused.

In the cross examination, he admitted that before the incident, there was no occasioned to meet accused Manoj Joshi and thereafter, he recollected his memory and clarified that accused Manoj Joshi took him on his bike and was knowing him

before the incident. The witness in his cross examination has stated that there was no light in the godown, but he found sufficient light in the outside of the office. The witness has denied to the suggestion that the appellant accused was not present at the place of incident and the injuries which he stated being suffered by him in the accident.

(4) Mohammad Yunus Mansuri (PW:4). The witness being Executive Magistrate has conducted the identification parade of the witnesses. In the chief examination, he has stated that on 09.10.2002, he received the requisition for conducting the T.I. Parade of the appellant accused and the same was fixed on the next date i.e. 10.10.2002 at about 04:00 o'clock. The witness has further stated that the accused was brought before him and his face was covered by the police so that no one could see him. The witness has further stated that he called two panchas and called five dummy persons and thereafter, he called the PW:1 Jiya Ulhaq for test identification parade and he identified the accused from the line of the dummy persons. The witness has further stated that on the same line, PW:2 Vitthal Nathalal Parmar has identified the accused appellant. In the cross examination, the witness has denied that the complainants and the accused were brought together to his office by the police.

(5) So far as documentary evidence as relied by the prosecution are concerned, the documents which were relied in the case of co-

accused have been produced and exhibited.

13. We have given thoughtful consideration to the respective submissions and perused the case records as well as findings of conviction recorded by the Trial Court.

14. Having regard to the facts and circumstances of the present case and evidence on record, question that arises for our consideration is whether the prosecution has been able to establish to involvement of the appellant accused in the crime in question and succeeded in proving the charge against the accused beyond reasonable doubt ?

15. Now we are examining the credibility and reliability of the injured witnesses. The PWs:1, 2 and 3 have categorically stated that the accused had beaten up and they had been treated at the respective hospitals. We have examined the testimonies of injured witnesses and also perused the medical case records. It is proved and established that, in the incident, the witnesses had sustained injuries as mentioned in the case papers and we have no doubt in our mind that, these injuries cannot be said to be a self inflicted injuries or sustained in the accident. The testimonies of the witnesses, the role attributed to the accused herein as well as co-accused, are seems to be consistent and there is no reason for them to falsely involve the appellant accused. The witnesses had given a clear account of their incident and manner in which, they had

been kidnapped and beaten up for the purpose of monetary benefits by the accused. PWs:1 and 2, upon whom the act of unnatural sex was performed by the accused, also being narrated by the victims in clear terms and there is no reason for them to made baseless and concocted story of unnatural sex. It is on record that the co-accused Binesh Sathwara was running an anti corruption movement and his institution was registered with the Charity Commissioner and office was shown at the industrial shed where the offence alleged to have been committed. There was a some delay in lodging the FIR, but the witnesses have explained the delay in lodging the FIR and having regard to the circumstances of the case, the manner in which, the atrocities being committed upon the witnesses, it could not be expected from them for filing prompt criminal case or disclosure of the incident to the family members. In such circumstances, we are satisfied that the oral testimonies of witnesses are truthful and their conduct after the incident were seems to be natural and in that view of the matter, on scrutiny of their evidence, we do not find any infirmities in their evidence. It is relevant to note that the witnesses have sustained injuries allegedly caused by the accused and same has been proved by adducing acceptable medical evidence and therefore, the statements of injured witnesses has a great value and their statements are not to be discarded lightly and their evidence must be given a due credence and one thing is clear that normally injured witnesses would not let go the real culprit by falsely implicating wrong persons. Thus, it is evident

that the versions of the witnesses clearly establish the incident and role played by the accused and there is nothing to show that there was inimical relation or for any other reason either to take revenge or with malafide intention, the witnesses are saying lie against the accused. In such circumstances, referred to above, we have no doubt in our mind about the credibility, acceptability and reliability of the version which is otherwise inspiring confidence given by the three injured witnesses. Thus, the prosecution is able to prove, the involvement of the accused – appellant, in the alleged act of kidnapping of the PW.1, 2 and 3 and after kidnapping, they have been wrongfully confined in the industrial shed where they have been beaten by the accused so as to extract the financial benefit and thereafter, also for the purpose of blackmailing and extortion, they took nude photographs of the witnesses and also performed unnatural sex to satisfy their lust upon the PW.1 and 2 and the manner in which the pre-arranged plan systematically and with all smartness being executed which further rise to presumption that the accused had a common intention to commit the offence.

16. Now we will examine the contentions raised by the accused herein one by one.

17. It is the contention that the ingredients of Section 34 of the IPC are not satisfied and accused appellant cannot be jointly and vicariously liable for the acts of others. The Trial Court with the

aid of Sections 34 and 114 of the IPC convicted the appellant accused. Section 34 of the IPC recognizes the principle of vicarious as also joint liability in the criminal act which is an exceptional to the general rule that every person is liable for his acts and not for acts of others. Section 34 makes a person liable for an offence not actually committed by him, but by another person with whom he had shared common intention. The pre-condition for attract of Section 34 is that the act must have been done by two or more persons in the furtherance of common intention and the accused should have participated in the commission of the crime one way or other. The present case appreciated on the touchstone of the aforesaid law and after careful examination of the evidence, it proves that the modus operandi of the accused was the same and all the victims were being kidnapped from Lal Darwaja area and before kidnapping, as per pre-arranged plan, they got acquainted with the victim and then, under the pretext, either to drop them or to help him out, they used to take at the place of the incident and causing injuries and performing physical atrocities, the victims were compelled to offer some money. Thus, this act could not be possible by any single person and the manner in which the offence being executed, reasonable inference would arise that with pre-arranged plan, the each accused accepted specific role to commit the crime and then, at the end, they got a positive result. Thus, the accused herein had shared the common intention and the offences were done in furtherance of common intention of all and therefore, the

contention that Section 34 of the IPC is not attracted in the present case, has no any merits.

18. It is the next contention that FIR allegedly lodged after delay for which there is no explanation coming forth and on this count, prosecution case becomes doubtful. In the facts of the present case, the allegation proved is that the victims were subjected to unnatural sex and threatened by the accused for dire consequences if they report to the police. The victims had been severely injured and they were in shock, which facts being stated by the victims in their respective testimonies. The delay as claimed cannot be termed to be an inordinate delay and therefore, when there was no motive to implicate the accused falsely and in each case, the witnesses have given plausible reasons for delay, the case cannot be doubted merely on the ground of maximum 4 to 5 days delay in lodging the FIR.

19. The another contention raised is that the presence of the accused was doubtful and evidence of T.I. Parade does not inspire confidence and therefore, the identity of the accused is not established. We are not impressed with the arguments. It is no doubt true that except A1, the witnesses were knowing the other accused before the incident. The testimony of Executive Magistrate PW:4 would establish that he had followed the proper procedure while conducting the parade and as such, there was no delay in conducting T.I. Parade. Thus, when the victims had

sufficient time to show the accused and after the incident, in the T.I. Parade, the identified the accused and also in the Court, which indicative of the facts that the identification of the accused has been clearly established and the entire process of test identification parade being done genuinely in a fair and reasonable manner.

20. The another contention raised with regard to reliability of the witnesses. It is relevant to note that the witnesses were victims and being injured witnesses, their presence at the time and place of occurrence, in absence of contrary evidence, cannot be doubted. In the case of **Babu Sudam Khalde Vs. State of Maharashtra (2023 SCC Online Supreme Court 355)**, the Apex Court summed up the principles which are to be kept in mind when appreciating the evidence of injured eyewitness. In Para-26, it was held as follows:

> *"26. When the evidence of an injured eye-witness is to be appreciated, the under- noted legal principles enunciated by the Courts are required to be kept in mind:*
>
> *(a) The presence of an injured eye-witness at the time and place of the occurrence cannot be doubted unless there are material contradictions in his deposition.*
>
> *(b) Unless, it is otherwise established by the evidence, it must be believed that an injured witness would not allow the real culprits to escape and falsely implicate the accused.*

(c) The evidence of injured witness has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly.

(d) The evidence of injured witness cannot be doubted on account of some embellishment in natural conduct or minor contradictions.

(e) If there be any exaggeration or immaterial embellishments in the evidence of an injured witness, then such contradiction, exaggeration or embellishment should be discarded from the evidence of injured, but not the whole evidence.

(f) The broad substratum of the prosecution version must be taken into consideration and discrepancies which normally creep due to loss of memory with passage of time should be discarded."

In the case on hand, the evidence of three eyewitnesses is consistent on the aspect of involvement of the accused and alleged act of kidnapping and other offences and therefore, in absence of any compelling reasons, their presence at the time and place of the occurrence cannot be doubted. The industrial shed where the incident took place is situated in Odhav Area of Ahmedabad and there is nothing on record to show that the neighbouring owner of the factory and their workers were present at the time of incident. It is settled position of law that, it may be enough to sustain conviction on the testimony of reliable and trustworthy witnesses as witnesses have to be weighed, not counted and in the present case, the version given by the witnesses on the aspect of role played by the accused are

consistent and no any inherent improbability of the story being found by us after analysis of their evidence.

21. It is the contention that, the necessary ingredients of the offences charged have not been established and proved. Let us examine the contention by referring the statutory penal provision:

(i) Section 364A of IPC: Kidnapping for ransom which reads 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, 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."*

Upon bear reading of the section, it provides that, there should be a kidnapping or abduction of any person or a person should be kept in detention after such kidnapping or abduction. If the said act is coupled with the threat to cause death or hurt to such person, an offence under Section 364A is attracted. In the facts of the present case,

so far as co-accused A1 to A4 are concerned, the trial court did not have believed the charge under Section 364A of the IPC. The witnesses in the case of co-accused also, have deposed against them. The State has not filed appeal against the acquittal of the accused under Section 364A of the IPC. In such circumstances, in our opinion, to establish a charge for kidnapping or ransom, a demand for ransom has to be made and it should be properly communicated to third person as well as the victim which facts are missing in the facts of the present case and therefore, our conclusion is that the charge of Section 364A against the appellant-accused is not established and proved.

(ii) Section 342 of IPC: Punishment for wrongful confinement which says that whoever wrongfully confines any person, shall be punished with imprisonment for a term which may extend to one year or with fine. The definition of wrongful confinement is prescribed in Section 340 of the IPC which defines that, whoever wrongfully restrain any person and such restrain must prevent from proceedings beyond certain circumscribing limit. In other words, the offence of wrongful confinement occurs when individual is wrongfully restrained in such manner as to prevent him from proceeding beyond certain circumscribing limit. In the facts of the present case, all three witnesses confined within the limits of industrial shed and according to their

version, they have been restrained and/or prevented by the accused and under threat they could not come out from the said area. In that view of the matter, the essential ingredients of wrongful confinement are attracted in the facts of the present case and thus, therefore, we do not find any substance in the submission that, the charge under Section 342 has not been proved and established.

(iii) Section 365 of IPC: Kidnapping or abducting with intent secretly and wrongfully to confined person: In order to prove the offence, the prosecution has to prove that, accused kidnapped or abducted any person and that he did so with intent to cause that person to be confined secretly and wrongfully. In the facts of the present case, the essential ingredients are attracted as all the witnesses on the different dates and time, kidnapped by the accused without informing the accused and their intention was to confine wrongfully the witnesses. Thus, in the facts of the present case, the prosecution has proved the charge under Section 365 of the IPC.

(iv) Section 367 of IPC: Kidnapping or abducting any person in order to cause grievous hurt or slavery or to the unnatural lust: In the facts of the present case, the witnesses were kidnapped by the accused and cause injuries at the place of incident and also committed and performed unnatural sex upon the PW.1 and 2 and

therefore, the ingredients of section are clearly proved and established against the accused.

(v) Section 377 of IPC: Whoever against the will and wish of the person perform the carnal intercourse against the nature with any man, woman or animal shall be punishable: In the facts of the present case, specific allegation being made against the appellant that, he along with co-accused, performed unnatural sex upon PW.1 and 2. In such circumstances, we do not find any merits in the submission that charge under Section 377 is not established against the accused.

(vi) Section 323 of IPC: which provides a punishment for voluntarily causing hurt as defined under Section 322 of the IPC: In the facts of the present case, as per the version of the witnesses, the appellant had caused injuries to them and same is proved by producing medical evidence.

(vii) Section 384 of IPC: which provides a punishment for extortion as defined under Section 383 of the IPC: In order to prove the charge, two things must require to be proved; (i) intentionally putting a person in fear of injury to himself or another; (ii) dishonestly inducing a person so put in fear to deliver to any person any property or valuable security. So far as facts of the present case are concerned, the witnesses have categorically stated that,

after kidnapping, they have been put in fear by causing injuries and then compelled to pay the money demanded by the accused. Thus, the ingredients of section are attracted in the facts of the present case.

(viii) Section 506(1) of IPC: which provides punishment for criminal intimidation. The definition of criminal intimidation given under Section 503 IPC says that, whoever threaten a person with an injury or his reputation or property with intend to cause that person to do any act which he is not legally bound to do. In the facts of the present case, so far as PW.2 Vitthal Parmar and PW.3 Natvar Vaghela is concerned, the ingredients of Section 506(1) are attracted as the accused threatened them and had caused injuries to make payment. _

22. For the reasons aforementioned, after analysis and re-appreciation of the evidence, we are satisfied that prosecution has proved its case with sufficient oral and documentary evidence beyond all reasonable doubt that the appellant-accused had participated in the offence as alleged and he acted in furtherance of the common intention of all accused and committed an offence of kidnapping of PW.1, 2 and 3 and after putting them in the fear and by causing injuries, they wrongfully confined and were subjected to unnatural sex and therefore, we have no any hesitation to hold that, the trial court has rightly found the appellant-accused guilty for the offences punishable under Sections 323,342, 365, 367, 377, 384

and 506(1) of the IPC read with Sections 34 and 114 of the IPC. However, so far as Section 364A is concerned, the prosecution miserably failed to prove charge for the act of kidnapping for ransom and to that extent, the conviction and sentence rendered under Section 364A is set aside in all three sessions cases i.e. Sessions Case No.152 of 2003, 153 of 2003 and 154 of 2003 and the appellant-accused is acquitted of the charge under Section 364A of the IPC. In other words, the conviction and sentence rendered in all three sessions cases, except Section 364A has been upheld.

23. So far as enhancement appeal i.e. Criminal Appeal No.376 of 2005 filed by the State is concerned, we are of the view that, when the conviction under Section 364A is set aside, and having regard to the sentence awarded in other offences as referred above, it is difficult for us to hold that the trial court did not have imposed a substantial sentence and the sentence awarded is manifestly inadequate. Thus, we do not find any infirmities in the order of sentence as while exercising judicial discretion, the sufficient and acceptable reasons have been recorded in the judgment impugned and therefore, considering the peculiar facts and circumstances of the case, we do not find any grounds warranting interference with the order of sentence awarded by the trial court against the accused. Resultantly, the enhancement appeal fails and is hereby dismissed.

24. The appellant accused A5 is on bail, he is directed to surrender to undergo remaining sentence within 8 weeks. If he will not surrender within stipulated time, the trial Court shall issue warrant for securing his presence. The bail bond stood cancelled. R&P be sent forthwith to the trial Court.

25. Accordingly, criminal appeals being Criminal Appeal No.1694 of 2005, Criminal Appeal No.1952 of 2005 and Criminal Appeal No.1953 of 2005 are allowed in part, in the aforesaid terms.

(ILESH J. VORA,J)

(P. M. RAVAL, J)

P.S. JOSHI

Original copy of this order has been signed by the Hon'ble Judges.
Digitally signed by: PALLAV SUBHASHCHANDRA JOSHI(HC00177), Principal Pvt. Secretary, at High Court of Gujarat on 30/09/2025 13:53:35