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## **Lalit Vilasrao Thakare Vs The State of Maharashtra**

**206 of 2017**

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**Court:** Bombay High Court (Nagpur Bench)

**Date of Decision:** Jan. 19, 2018

**Acts Referred:**

[Indian Penal Code, 1860](#), [Section 342](#), [Section 364A](#), [Section 384](#), [Section 327](#), [Section 383](#) - Punishment for wrongful confinement - Kidnapping for ransom, etc - Punishment for extortion - Voluntarily causing hurt to extort property, or to constrain to an illegal act - Extortion#[Evidence Act, 1872](#), [Section 73](#) - Comparison of signature, writing or seal with other admitted or Proved

**Hon'ble Judges:** R.K. Deshpande, M.G. Giratkar

**Bench:** Single Bench

**Advocate:** S.P. Bhandarkar, Trupti Udeshi

**Final Decision:** Partly Allowed

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### **Judgement**

1. The appellant-accused is convicted for the offence punishable under Sections 327, 342, 364-A and 384 of the Indian Penal Code ("the

offences in question") by the learned Additional Sessions Judge (V), Nagpur in Sessions Case No.78 of 2013 and is sentenced - (i) to undergo life

imprisonment with a fine of Rs.5,000/- for the offence punishable under Section 364-A of the Indian Penal Code, (ii) to undergo rigorous

imprisonment for two years with a fine of Rs.3,000/- for the offence punishable under Section 384 of the Indian Penal Code, (iii) to undergo

rigorous imprisonment for six months with a fine of Rs.500/- for the offence punishable under Section 342 of the Indian Penal Code, and (iv) to

undergo rigorous imprisonment for one year with a fine of Rs.1,000/- for the offence punishable under Section 327 of the Indian Penal Code. All

the sentences are directed to concurrently.

2. The incident occurred on 5-9-2012 at Nagpur. PW 4 Samyak and PW 5 Vikrant are the victims, and PW 4 Samyak is also the complainant, at

whose instance FIR No.248/12 was registered on 7-9-2012 against the appellant-accused for the offences in question. PW 4 Samyak was in 11th

Standard on the date of incident and studying at Kamla Nehru Arts, Commerce and Science College at Nagpur. He was residing at Gayatri

Hostel, Nandanwan Chowk, Nagpur. PW 5 Vikrant was also taking education in 11th Standard at Kamla Nehru Arts, Commerce and Science

College, Nagpur. Both the victims were knowing each other and also the accused Lalit.

3. The story of the prosecution is that on the date of incident, one Anand Thakur along with accused Lalit came on motorcycle to the hostel of PW

4 Samyak at about 8.30 p.m. and asked him to come out of the hostel for having some talk. In spite of his resistance, they took him forcibly to

Juna Sakkardara, near Shitla Mata Mandir in the slum. PW 4 was taken in one room in which 2/3 friends of Anand Thakur and accused Lalit were

already there, consuming liquor. They forced PW 4 to consume liquor. The accused slept him and Anand Thakur also beat him by means of belt

and told PW 4 that they require money, which he should demand from his family. They snatched a mobile from PW 4 and called the other victim

PW 5 Vikrant on mobile and told him to come near Shitla Mata Mandir. PW 5 reached there on scooter and Anand Thakur brought him in the

room and all of them started beating him by means of belt and wine bottle.

4. According to the story of prosecution, the sister of accused Lalit came in the room and asked the accused and others as to why they are beating

the teens. The accused asked her to go out. She, therefore, went out of room and started crying. Accused Lalit made a phone call to the father of

PW 4 Samyak at Mumbai upon the cell number being supplied, and abused his father. The accused caught hold of PW 4 and told this to his father

and demanded Rs.1,50,000/- for release. The father of PW 4 assured payment for release. At about 12 hours in the night, the accused released

both the victims, who then went to the hostel on the scooter of PW 5 Vikrant. After reaching the hostel, PW 4 Samyak received a call from the

accused, who told him that he will take Rs.1,00,000/- from his father and asked him to hand over the phone to PW 5 Vikrant, who was told that

an amount of Rs.50,000/- shall be taken from him.

5. PW 2 Nalini is the mother of PW 4 Samyak, who was staying at Chandrapur, states in her evidence that the incident occurred on 5-9-2012 at

about 10.15 p.m., when she received a call from Samyak on her mobile to tell her whether she can send Rs.50,000/-. She states that PW 4

Samyak was crying and afraid and some other person took the mobile of Samyak and told her that Samyak had borrowed an amount of

Rs.50,000/- from him for the business of ganja and charas and he wanted return of it. She states that after the call was disconnected, she made a

call to her husband, and enquired from him whether he received a telephone call of Samyak. The husband told her to have received one missed call

and then he made a return call and told the said person to drop Samyak at the hostel. After about two hours, Samyak was dropped at the hostel.

PW 2 Nalini left Chandrapur at about 3 a.m. and reached Nagpur at about 6 a.m. and directly went to the hostel, took Samyak and brought him at

Chandrapur at about 9 a.m. on 6-9-2012.

6. The FIR was registered on 7-9-2016 when PW 4 Samyak along with his mother PW 2 Nalini and the father came to Nagpur and lodged a

complaint in the Police Station. The Sessions Court relies upon the evidence of PW 2 Nalini and PW 6 Aniruddha, the mother and father of victim

Samyak, and also the evidence of PW 5 Vikrant to hold that there is nothing to disbelieve in their evidence, which was not challenged in the cross-

examination. It holds that the defence did not challenge the fact that when the informant reached the hostel, accused Lalit made a phone call and

demand that they have to pay Rs.1,50,000/-. Thus, the demand of Rs.1,50,000/- was virtually admitted.

7. The Sessions Court criticizes the investigation for not seizing the mobile phones of the victims as well as the parents of PW 4 Samyak and of the

accused persons. It criticizes the prosecution for not collecting the call detail reports of the mobile phones and holds that the Investigating Officer

seems to be either highly inefficient or that he did so deliberately to help the accused. The Sessions Court holds that in such a situation, the case of

the prosecution cannot be doubted for absence of seizure of mobile and collection of call detail reports.

8. The Sessions Court holds that when PW 2 Samyak spoke to his mother on phone, he was in the captivity of the accused, and this fact remained

unchallenged. It holds that both the victims were kidnapped, confined, beaten and in their presence, demand for ransom amount was made. The

victims have also proved that how the accused demanded the ransom amount of Rs.1,50,000/- by directly speaking to the father and mother of the

informant and by forcing the victims to convey the demand to their parents.

9. The Sessions Court relies upon the evidence of PW 7 Dr. Tarunkumar, who examined the victims and found some simple injuries, which were

24 to 48 hours" old and issued the medico legal certificates at Exhibits 37 and 38. It holds that the opinion of the doctor is required to be accepted

in spite of the fact that the Investigating Officer did not send the seized belt to the doctor to get a query report as to whether the injuries sustained

by the victims could have been caused by the seized belt. The Sessions Court holds that the victims were examined after about 45 hours of the

incident and, therefore, the injuries as well as abrasions are bound to lessen with passage of time and the query report cannot be attached much

significance.

10. We have heard Shri S.P. Bhandarkar, the learned counsel appearing for the appellant-accused; and Ms Trupti Udeshi, the learned Additional

Public Prosecutor appearing for the respondent-State.

11. Coming to the question of conviction of the accused for the offence under Section 364-A of the Indian Penal Code, i.e. kidnapping for

ransom, etc., for which the sentence of life imprisonment is imposed by the Sessions Court, Shri Bhandarkar, the learned counsel, has relied upon

the decision of the Apex Court in the case of Suman Sood alias Kamal Jeet Kaur v. State of Rajasthan, reported in (2007) 5 SCC 634, to urge

that neither the said provision is attracted in the present case nor there is any evidence on record to substantiate such a charge.

12. In the decision of the Apex Court in Malleshi v. State of Karnataka, reported in (2004) 8 SCC 95, the appellant-accused was convicted for

the offence punishable under Section 364-A of the Indian Penal Code and was sentenced to life imprisonment. In appeal, the Karnataka High

Court confirmed the conviction and sentence. The Apex Court maintained the decision of the High Court. It was a case where PW 2 was taken in

a jeep by four persons and was driven to a different place. PW 2 was threatened and was asked about the phone number of his father, who will be

asked to pay Rs.4,00,000/- for his release. PW 2 told that such huge amount cannot be arranged and at the most the accused persons may get

about Rs.50,000/- by raising loan from others. The accused wanted at least Rs.2,00,000/-. PW 2 managed to run away from the jeep when it was

parked before the demand was conveyed to the father.

13. In the aforesaid background, the contention raised in Malleshi's case, cited supra, was that the demand for ransom was not established and

in any event it was not conveyed to any person for ransom and, therefore, Section 364-A of the Indian Penal Code was not attracted. The Apex

Court holds in para 15 of its judgment that it cannot be laid down as a straitjacket formula that the demand for payments has to be made to a

person who ultimately pays. After making the demand to the kidnapped or abducted person, merely because the demand could not be conveyed

to some other person, as the accused is arrested in the meantime, does not take away the offence out of purview of Section 364-A. The Court

holds that it has to be seen in such a case as to what was the object of kidnapping or abduction. The essence of abduction is causing to stay in

isolation and demand for ransom. The demand in the case before the Apex Court was already made by conveying it to the victim. The Court holds

that ultimately the question to be decided is ""What was the intention? Was it demand for ransom?"" It holds that there can be no definite manner in

which demand is to be made and who pays the ransom is not the determinative fact.

14. In the decision of the Apex Court in Suman Sood's case, cited supra, the provision of Section 364-A of the Indian Penal Code, i.e.

kidnapping for ransom, was considered. Paras 58 to 62 being relevant, are reproduced below :

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 their release". "To hold someone

to ransom" means "to hold someone captive and demand payment for their 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 secret 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.

From the aforesaid law laid down by the Apex Court, one of the ingredients, which is required to be proved, is that kidnapping must be for

ransom. Though the term "ransom" has not been defined in the Indian Penal Code, the Apex Court considers the said term as a noun to mean "a

sum of money demanded or paid for the release of a captive". The Apex Court holds that as a verb, "ransom" means to "obtain the release of

(someone) by paying a ransom", "detain (someone) and demand a ransom for their release". To hold someone to ransom means to "hold someone

captive and demand payment for their release". The Apex Court considers the definition of "ransom" in Advanced Law Lexicon, which describes it

as "a sum of money paid for redeeming a captive or prisoner of war, or a prize". Lastly, the Apex Court holds that "ransom" is a sum of money to

be demanded to be paid for releasing a captive, prisoner or detenu.

15. In the recent decision of the Apex Court in the case of Birbal Choudhary @ Mukhiya Jee v. State of Bihar, reported in 2017 SCC OnLine SC

1240, relied upon by Ms Trupti Udeshi, the learned Additional Public Prosecutor, the accused were convicted for the offences punishable under

Sections 364-A, 34, 395 and 412 of the Indian Penal Code by the Trial Court, which was confirmed in appeal by the High Court. The accused

were sentenced to undergo imprisonment for twenty years. The High Court holds that once the demand for ransom stood established, whether it

was actually paid or not, was irrelevant. In para 31 of the said decision, the Apex Court confirms this view in terms as under :

31. ... Once the abduction has been established, surely the abductors did not do so in such planned organized manner with smooth flawlessness

discussed, to play hide and seek games or only to scare the victims out of a business dispute or for any other reason to force them to desist from a

particular course of action. An act of abduction in the present manner is the result of meticulous planning of the logistics with separate roles

assigned to the individual players. The demand for ransom, therefore, clearly stands established. That it was actually paid or not is irrelevant.

The Apex Court thereafter considers the decision in Malleshi's case, cited supra, and holds in para 35 that insofar as kidnapping is concerned,

there is no serious dispute about the same. It holds that the demand for ransom has been duly proved by the prosecution.

16. The provision of Section 364-A of the Indian Penal Code, which is required to be considered, is reproduced below :

364-A. Kidnapping for ransom, etc.-- Whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or

abduction, and threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be

put to death or hurt, or causes hurt or death to such person in order to compel the Government or any foreign State or international inter-

governmental 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.

17. The provision of Section 364-A of the Indian Penal Code deals with the cases of kidnapping and abduction both. It also deals with the person

kept in detention after such kidnapping or abduction. Thus, the kidnapping or abduction or detention after such kidnapping or abduction for

ransom, has to be established. The provision further contemplates - (a) direct threat to cause death or hurt to such person, or (b) by conduct giving

rise to a reasonable apprehension that such person may be put to death or hurt, or (c) actually causes hurt or death to such person. Therefore,

merely because a person is held in captivity would not be enough to record the conviction under Section 364-A of the Indian Penal Code, unless

one or more of these three things or the acts is/are established with an intention to compel the victim or any other person to do any act or to pay

ransom.

18. Inviting our attention to the provision of Section 364-A of the Indian Penal Code, Shri Bhandarkar has urged that - (a) there is no evidence

that the alleged demand was actually conveyed to "any other person", in the present case to the father of PW 4 Samyak, and (b) the expression "to

pay ransom" in the said provision refers to actual payment of ransom before release or redeeming a captive or victim.

19. Ms Trupti Udeshi, the learned Additional Public Prosecutor, inviting our attention to the medical report, submits that actually the injuries were

caused to the victims and the evidence on record also established the direct threat of causing hurt to the victims if the demand for ransom is not

fulfilled. She submits that actual demand for ransom by keeping the victims in captivity is established. She invited our attention to the allegation in

the complaint at Exhibit 28 to the effect that the accused obtained thumb impressions and signatures of the victims on different blank papers under

coercion or threat of injury before releasing them from captivity.

20. In this case, we are concerned only with the act of compelling the victims or any other person ""to do any act"" or ""to pay ransom"". In view of

the decision of the Apex Court in Malleshi's case, cited supra, the act of compelling the victims to do something or demand for payment of ransom

would be governed by the provision of Section 364-A of the Indian Penal Code and it is not necessary to establish that such demand was

conveyed to any person other than the victims. Hence, in the facts and circumstances of the present case, even if we accept the contention that

actual demand to pay ransom was not conveyed to PW 6, the father of the victim, it would be enough to establish that the victims were compelled

to do something or there was a demand made to them to pay ransom for their release from captivity. We, therefore, reject the contention of Shri

Bhandarkar that the provision is not attracted because the demand for ransom was not conveyed to ""any person other than victim"".

21. In our view, the question as to whether the evidence of actual payment of ransom is necessary before redeeming or release of the victim or

captive, is concluded by the decision of the Apex Court in Birbal Choudhary's case (supra). In the said decision, there was no evidence of actual

payment of ransom before release of the victim or captive. The twelve persons named as accused kidnapped and kept the victims in their custody

as well as tortured the victims to pay the ransom in furtherance of their common intention. Out of four victims, the driver was released on the next

day, whereas two other abductees were kept in confinement for a period of 52 days and were subsequently released. The Court held on the basis

of the evidence on record that the demand for ransom was established and the fact as to whether it was actually paid or not, is irrelevant. We,

therefore, reject the contention of Shri Bhandarkar that actual payment before release or deeming a captive or victim has to be established.

22. In Malleshi's case, the Apex Court has held that the essence is the intention of making such demand and was it for ransom. The offence of

kidnapping for ransom, if proved, invites the punishment of death or imprisonment for life along with the fine. No punishment lesser than this can be

imposed. The seriousness with which the Legislature has treated this offence can be judged from the punishment prescribed for it and, therefore,

such a rigor is required to be kept in mind while appreciating the evidence on record to decide the intention of the accused.

23. The complainant-victims and the accused persons are essentially the students knowing each other. The evidence brought on record shows the

case of the defence that the victims had taken some amount from the accused for the business of sale of charas and ganja, in which they were

allegedly involved. The accused wanted this amount back from the victims, who were kept in captivity in the house of the accused where the other

family members were staying. In fact, the sister of the accused repeatedly requested the accused to release the victims. Thus, the accused and

victims were not unknown to each other at the time of incident and the place of captivity was neither unknown nor in isolation. It is not the case that

the victims could manage to run away from the captivity. The victims were ultimately released from captivity without getting the demand fulfilled.

The intention was to keep them in captivity for recovery of an amount which was allegedly due and payable to the accused and not to demand

ransom for their release.

24. The oral evidence of the victims about actual causing hurt or injuries to them by means of belt and wine bottle while they were in captivity is not

corroborated or supported by other evidence. Though the belt and wine bottle were seized, the same were not sent to PW-7 Dr. Tarun Kumar for

a query report, nor there is a report of the Chemical Analyzer in respect of it. PW-7 Dr. Tarun Kumar, who examined the victims on 7-5-2012,

states that the injuries on the victims cannot be determined actually, though he broadly opined that those were 28 to 48 hours" old. It is not the

version of the victims that they communicated PW-6 Aniruddha, the father of the victims, about the actual injuries or threats caused to them to

meet the demand for ransom. The version of PW 6 that Manoj, the security guard of the hostel, told him that Samyak is not in a position to talk

because of injury, is not supported by PW 10 Manoj. Thus, there is no evidence to establish causing of hurt or injuries to the victims by the

accused.

25. The evidence to corroborate the oral version of the witnesses about the actual threats to cause injury to the victims and the demand for ransom

of Rs.1,50,000/- could have been collected and produced by the prosecution. The prosecution has failed to do this. The solitary statement of PW

6 Aniruddha, the father of Samyak, that Lalit conveyed him on phone ""to pay an amount of Rs.1,50,000/- otherwise he will kill Samyak"" cannot be

relied upon to convict the accused. The Sessions Court, therefore, criticizes the prosecution for not seizing the mobile phones of the victims as well

as the parents of PW 4 Samyak and that of the accused persons. The Sessions Court also criticizes the prosecution for not collecting the call detail

reports of mobile phones, but, on the contrary, holds that the Investigating Officer seems to be highly inefficient or that he did so deliberately to

help the accused. There is no evidence produced on record to establish the direct threat to cause death or hurt to the victims while in captivity so

as to compel them or any other person to pay ransom.

26. The blank papers containing the thumb impressions and signatures obtained from the victims were not sent to the Handwriting Expert for giving

opinion as to whether the same were of the victims. The Sessions Court holds that the signatures on the blank papers were of the victims by having

recourse to the provisions of Section 73 of the Indian Evidence Act by comparison. In our view, such comparison of signatures and recording

findings one way or the other, would be enough to prove any fact on the preponderance of probabilities, but would not furnish a proof beyond

reasonable doubt.

27. In view of above, we have no hesitation to hold that the prosecution has failed to establish that there was a direct threat to cause death or hurt

to the victims while in captivity, or the conduct of the accused was such as to give rise to a reasonable apprehension that they may put the victims

to death or hurt, or that the hurt was actually caused to the victims by the accused. There is a failure to establish the intention of the accused to

demand ransom for release of the victims beyond reasonable doubt. We, therefore, cannot sustain such findings recorded by the Sessions Court.

28. Coming to the offence of extortion described under Section 383 of the Indian Penal Code, the punishment prescribed is for a term, which may

extend to three years or with fine or with both. The provision being relevant, is produced below along with the illustrations (a) and (b) below it.

383. Extortion.--Whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security, or anything signed or sealed which may

be converted into a valuable security, commits ""extortion"".

Illustrations

(a) A threatens to publish a defamatory libel concerning Z unless Z gives him money. He thus induces Z to give him money. A has committed extortion.

(b) A threatens Z that he will keep Z's child in wrongful confinement, unless Z will sign and deliver to A a promissory note binding Z

to pay certain monies to A. Z signs and delivers the note. A has committed extortion.

The offence of extortion is of a lesser nature of crime and different than the offence of kidnapping for ransom which is of more serious in nature. To

attract the offence of extortion, it is not necessary to establish that the person, i.e. the victim, is in captivity. One of the necessary ingredients to

attract the offence of extortion is the delivery of property or valuable security to any person or to get anything signed or sealed, which may be

converted into a valuable security.

29. We have already pointed out earlier and we reiterate that there is no evidence brought on record to establish delivery of any property or

valuable security to any person under the fear or any injury to the victims, PWs 4 and 5. No doubt, that the evidence brought on record indicates

that the accused got signed from the victims certain blank papers and also obtained thumb impression under the threat of injury. The expression

anything signed or sealed which may be converted into a valuable security"", employed under the provision of Section 383 of the Indian Penal

Code, would not cover obtaining of signatures or thumb impression on different blank papers from the victims under the fear of causing injury for

the reason that such papers cannot be converted into a valuable security. At the most such papers can be utilized for acknowledging the debts, if

any, or incorporating an undertaking to pay the amount. In our view, there is no case made out for an offence of extortion under Section 383 of the

Indian Penal Code.

30. Now coming to an offence of causing hurt to extort property, as contemplated by Section 327 of the Indian Penal Code, once we record the

finding that there is no evidence on record to hold that the accused caused hurt or injuries to the victims and that there is no case made out for an

offence of extortion under Section 383 of the Indian Penal Code, the accused cannot be convicted for an offence punishable under Section 327 of

the Indian Penal Code. The conviction to that effect recorded by the Sessions Court cannot, therefore, be sustained.

31. The charges framed against the accused include the charge of kidnapping for ransom on the date of incident, the victims were aged more than

16 years of age and, therefore, it can only be an offence of abduction, as defined under Section 362 of the Indian Penal Code. The provision of

Section 364-A of the Indian Penal Code also include abduction for ransom, and merely because the charge of abduction was not framed against

the accused, for which a punishment lesser than one for the offence of kidnapping for ransom is prescribed, it will not deter us from holding the

accused guilty of an offence of abduction and imposing the punishment under Section 365 of the Indian Penal Code for kidnapping or abducting

with intent secretly and wrongfully to confine a person, which may extend to seven years and also with a fine.

32. Section 362 of the Indian Penal Code describes an offence of abduction, which is reproduced below :

362. Abduction.-- Whoever by force compels, or by any deceitful means induces, any person to go from any place, is said to abduct that person.

The expression ""force"" employed in the aforesaid provision will have to be understood in the light of its definition under Section 349 of the Indian

Penal Code, which is reproduced below :

349. Force.-- A person is said to use force to another if he causes motion, change of motion, or cessation of motion that other, or if

he causes to any substance such motion, or change of motion, or cessation of motion as brings that substance into contact with any

part of that other's body, or with anything which that other is wearing or carrying, or with anything so situated that such contact

affects that other's sense of feeling:

Provided that the person causing the motion, or change of motion, or cessation of motion, causes that motion, change of motion, or

cessation of motion in one of the three ways hereinafter described:

First.-- By his own bodily power.

Secondly.-- By disposing any substance in such a manner that the motion or change or cessation of motion takes place without any

further act on his part, or on the part of any other person.

Thirdly.-- By inducing any animal to move, to change its motion, or to cease to move.

33. In the light of the aforesaid definition, the question to be considered in the present case is whether the accused employed force over PW 4

Samyak, the victim, to compel him to go from his hostel to the house of the accused. It is not the case of the prosecution that the accused caused

motion, change of motion, or cessation of motion to the victim, as defined under Section 349 of the Indian Penal Code. PW 4 states in his

examination-in-chief as under :

1] ... I am knowing Anand Thakur since 9th standard. He was my friend. Anand introduced me with accused Lalit who is present in the court, therefore, I am knowing Lalit.

2] The incident occurred on 05-09-2012. On that day, at about 8.30 p.m. Anand Thakur and Lalit had been to the Hostel on their motorcycle. They told me to come out of the hostel for having some talk. I told them that I am having some work and unable to come

with them. They forcibly took me to Juna Sakkardara near Shitlamata Mandir in the slum. ...

PW 4 states that he was knowing the accused, who was introduced to him by Anand Thakur, and on the date of incident, Anand Thakur and Lalit

had been to hostel on their motorcycle at 8.30 p.m. He states that the accused told him to come out of the hostel for having some talk. Though PW

4 expressed his inability to go with them, it is his version that they forcibly took him to Juna Sakkardara, near Shitla Mata Mandir, near the slum.

34. PW 5 Vikrant, the another victim, who was the room-mate of PW 4 Samyak, states in his oral evidence in paras 1 and 2 as under :

1] ... I am knowing Samyak. He was my roommate at the hostel. I was knowing Anand Thakur prior to one month of the incident. I am knowing Lalit Thakre. He is present in the court. Anand Thakur introduced me with Lalit Thakre.

2] On 05-09-2012 at about 8:30 p.m. accused and Anand Thakur had been to the hostel on two separate motorcycles. They took Samyak at the ground floor and took him at Old Sakkardara. At about 9:30 p.m. I had received telephone call from the mobile of Anand Thakur. I am knowing my mobile number. It is 9175701346. He told me that if I wish that my friend Samyak should remain alive, I should come near Shitalamata Mandir, Sakkardara, Umred Road. I took the Pleasure motorcycle of my friend Shubham and

reached to that place. Anand Thakur came there and took me to the room of Lalit Thakre. ...

35. From the oral evidence of PWs 4 and 5, it is apparent that Anand Thakur and the accused both came to the hostel of victims on two separate

motorcycles. The oral evidence of PW 4 is totally silent on the aspect of presence of PW 5 in the hostel at 8.30 p.m. on 5-9-2012, when the

accused came in the hostel and asked PW 4 to come out of the hostel for having some talk. The solitary version of PW 4 that the accused forcibly

took him to Juna Sakkardara, near Shitla Mata Mandir, in the slum, is not corroborated by any other evidence. It seems that PW 4 was a willing

party to sit on the vehicle, i.e. two-wheeler, as he did not raise any alarm nor jump from the vehicle if he was sensing deceitful means on the part of

the accused to take him from hostel to Shitla Mata Mandir. There is no evidence to establish beyond reasonable doubt that either the accused used

the force or by deceitful means induced PW 4 to come along with him at Shitla Mata Mandir. The evidence on record is short of establishing the

offence of abduction, as defined under Section 362 and punishable under Section 365 of the Indian Penal Code. Therefore, the conviction on that

count cannot be recorded.

36. Coming to the offence of wrongful confinement under Section 340 of the Indian Penal Code, the oral evidence of the victims and the father of

PW 4 appears to be trustworthy and established that the victims were wrongfully restrained or prevented from proceeding in any direction and

they were confined from 8.30 p.m. to 12 " O Clock in the night of 5-9-2012 in a separate room in the house of the accused. They were restrained

from proceeding beyond the circumscribing limits of the room in which they were confined. The evidence on record has clearly established that it is

only upon assurance given by the father of PW 4 the victims were released from captivity. In cross-examination, nothing to damage the version of

these witnesses is brought on record. The accused seems to be habitual offender and the offence of wrongful confinement is proved beyond

reasonable doubt. The accused is, therefore, convicted for such offence and he is required to be imposed with the punishment of imprisonment for

a term of one year with a fine of Rs.1,000/-. If the fine imposed is not paid, the accused will have to undergo simple imprisonment for a further

period of two months.

37. In the result, this appeal is partly allowed and the following order is passed :

: O R D E R :

(1) The conviction and sentence of accused- Lalit Vilasrao Thakare, imposed by the learned Additional Sessions Judge (V), Nagpur by his

judgment and order dated 5-4-2017 delivered in Sessions Case No.78 of 2013, for the offences punishable under Sections 327, 364-A and 384

of the Indian Penal Code, is hereby quashed and set aside along with the fine imposed. The accused is acquitted of those offences. The fine, if

paid, be refunded to the accused.

(2) The conviction of accused- Lalit Vilasrao Thakare for the offence of wrongful confinement under Section 340, punishable under Section 342 of

the Indian Penal Code, is maintained and the accused is sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.1,000/-;

in default thereof, the accused shall undergo simple imprisonment for one month. The set-off of the period undergone shall be provided.

(3) R & P be sent back.