

Before Surya Kant & R. P. Nagrath, JJ.

VIKRAM SINGH @VICKY WALIA & ANOTHER—Petitioners

versus

UNION OF INDIA AND OTHERS—Respondents

CWP No.18956 of 2012

3rd October, 2012

Constitution of India, 1950 - Art.14 & 21 - Indian Penal Code, 1860 - S.364-A - Amendment to Section 364-A IPC challenged whereby offence of "kidnapping for ransom" has been made punishable with death or imprisonment for life retrospectively - Petitioners also sought commutation of death sentence to life sentence - Petitioners held guilty of kidnapping a minor for ransom - Body of minor recovered on basis of disclosure statement of Petitioner # 2 - All Courts concurrently held that the accused were also guilty u/s 364A IPC as well - Accused awarded death sentence— Death sentence upheld by Hon'ble Supreme Court though the sentence awarded to wife of Petitioner # 2 commuted to life sentence - Writ Petition filed challenging retrospective insertion of Section 364-A IPC - Petition dismissed - Holding that petitioner's claim that the amended provision intended to punish those only with death penalty who commit the offence against Government, any foreign State or International Inter-governmental Organization, is thus totally farce and contrary to the legislative history of Section 364-A IPC.

Held. That apex Court considered the nature of the offence, its gravity and the befitting punishment consistent with the legislative object sought to be achieved by incorporation of Section 364-A in the year 1993. The plea now sought to be raised that Section 374-A IPC is attracted only when the offence is committed against Government or a foreign country etc or no such offence was made out in case of the petitioners, did not find favour with the highest Court.

(Para 13)

Further held. That the object of further amendment of Section 364-A IPC vide Amending Act No.24 of 1995 was to bring the domestic law consistent with the International Convention against the Taking of Hostages adopted by the General Assembly of the United Nations on 17th December, 1979 and to which India acceded to w.e.f. 7th September, 1994 only. The petitioner's claim that the amended provision intended to punish those only with death penalty who commit the offence against Government, any foreign State or International Inter-governmental Organization, is thus totally farce and contrary to the legislative history of Section 364-A IPC.

(Para 16)

Further held. That the challenge to the 'retrospectivity' of the provision is totally deceptive and misleading as nothing has been added or deleted in Section 364-A IPC after 14th February, 2005, namely, the date of commission of offence by the petitioners.

(Para 17)

Further held. That defining an act as 'offence' is predominantly the duty of Legislature. The prescription of befitting punishment for such offence is also a legislative policy. Every legislative action shall be presumed constitutionally valid unless proved otherwise. Challenge to a legislative action to rebut the presumption of its validity is thus permissible on two well-known principles, namely, (i) whether the legislative action offends Fundamental Rights or any other provision of the Constitution; (ii) was the Legislature, who enacted the impugned law, competent to legislate on the subject within the meaning of Article 246 of the Constitution?

(Para 19)

Bikram Chaudhary, Advocate and B.S. Bilowria, Advocate, *for the petitioners.*

Anmol Rattan Sidhu, Assistant Solicitor General of India with Naresh Kumar Joshi, Senior Counsel (Special Engagement Category) for Union of India.

Monica Chhibber Sharma, DAG Punjab

Ravi Dutt Sharma, DAG Haryana

SURYA KANT, J.

(1) The petitioners seek a writ of *certiorari* to strike down Section 364-A of the Indian Penal Code inserted by Act No.42 of 1993 w.e.f. 22nd May, 1993 whereby the offence of 'kidnapping for ransom' has been made punishable with death or imprisonment for life 'retrospectively' w.e.f. 22nd May, 1993 as according to the petitioners it *ultra vires* Articles 14 & 21 of the Constitution of India. A restrain order against execution of the death warrants issued for 5th October, 2012 with a further direction to "*re-open the case of the petitioners*" in the light of judgement of this Court in **Vinod Kumar versus State of Haryana (1)**, is also sought. The petitioners also seek a *mandamus* for commutation of the death sentence awarded to them into life imprisonment.

(2) The facts giving rise to this petition can be briefly noticed as the issues raised hereinabove do not *per se* hinge around the factual gamut.

(3) The petitioners were found guilty of kidnapping Abhi Verma, 16 years' old minor son of goldsmith Ravi Verma, for a ransom of Rs.50 lacs. The dead body of the minor was got recovered on the basis of a disclosure statement suffered by the second petitioner. All the Courts have concurrently held that father of the deceased was known to petitioner No.1 and his family, and under that acquaintance the kidnapping was committed betraying the trust; the three accused committed offence of murder in a preplanned manner by injecting Chloroform and Fortwin in heavy doses to the victim after tying both his hands and legs and sealing his mouth with a tape to prevent the detection of offence; all the three remained closely associated from the pre-planning till recovery of the dead body of the child;

it was not merely a case of murder simpliciter but the accused were guilty under Section 364-A IPC also; that there was no enmity between the petitioners and the family of the victim and cold-blooded murder was committed only to extract a heavy ransom of Rs.50 lacs.

(4) The trial in Sessions Case No.24 dated 3rd September, 2005 under Sections 302, 364-A, 201 & 120-B IPC led to conviction of the petitioners and their co-accused Sonia, wife of petitioner No.2, who were awarded the following sentence(s) vide judgement and order dated 20th/ 21st December, 2006 :-

Name of the accused	Convicted under Section	Sentence imposed
Vikram Singh @ Vicky	302 IPC	Death
	364A IPC	Death
	201 IPC	RI for seven years
	120-B IPC	RI for seven years
Jasvir Singh @ Jassa	302 IPC	Death
	364A IPC	Death
	201 IPC	RI for seven years
	120-B IPC	RI for seven years
Smt. Sonia	302 IPC	Death
	364A IPC	Death
	201 IPC	RI for seven years
	120-B IPC	RI for seven years"

(5) Murder Reference No.1 of 2007 was accepted by this Court vide judgement dated 30th May, 2008 and the death sentence awarded to the three accused was confirmed, dismissing their Criminal Appeal No.105-DB of 2007. The petitioners and their co-accused Sonia preferred Criminal Appeal Nos.1396-97 of 2008 which were dismissed by the Hon'ble Supreme Court vide judgement dated January 25, 2010 upholding their death sentence though in the case of their co-accused Sonia wife of petitioner No.2, it was converted into life concluding as follows:-

"30. We, however, do find some reason in favouring Sonia, the lady appellant, wife of Jasbir Singh. Keeping in view the overall picture and the fact that at the time when Abhi

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Verma had been kidnapped from outside the DAV School, Sonia had not been present and that she may have got embroiled in the conspiracy with her husband and Vikram Singh on account of having come under their pressure, some leniency must be shown to her. We are, therefore, of the opinion that insofar as Sonia is concerned, her death sentence ought to be converted into one of life. We order accordingly. The appeal of the other two appellants, however, is dismissed."

(6) It was categorically held that the act of the accused was absolutely devilish and dastardly acquiring enormity of a kind to bring it amongst the '*rarest of rare category cases*', warranting imposition of the extreme sentence of death on the petitioners though some leniency was shown by the Hon'ble Supreme Court to their coaccused Sonia for the reasons already reproduced in para 5 of this order.

(7) The petitioners have not disclosed in this petition and so did their counsel as to whether or not they preferred any mercy petition and if so, what was its outcome. The Sessions Court at Hoshiarpur has meanwhile issued death warrants for execution, prompting the petitioners to initiate these proceedings for the reliefs briefly noticed by us at the outset.

(8) We may now set out the following grounds, argued and pleaded on behalf of the petitioners to support various prayers made in this writ petition :-

- (i) The 'retrospective' insertion of Section 364-A IPC without spelling out any rationale or valid classification for awarding death sentence for 'kidnapping for ransom' violates Articles 14 & 21 of the Constitution. Relying upon the decision in **Swamy Shradananda @ Murali Manohar Mishra versus State of Karnataka (2)**, it was urged that the parameters laid down for the award of death sentence in **Bachan Singh versus State of Punjab (3)**, or summed up in **Machhi Singh & Ors. versus State of Punjab (4)**, were also not found exhaustive enough

(2) (2008) 13 SCC 767

(3) (1980) 2 SCC 684

(4) (1983) 3 SCC 470

and lack of uniformity and consistency in awarding death sentence was duly noticed. Since the question of death penalty is not free from subjective element, it was urged that the award of such an extreme sentence for the offence of 'kidnapping for ransom' is totally arbitrary and does not stand to the test of Article 14 of the Constitution. For the same reason, it violates Article 21 as well.

- (ii) The legislative object behind the inscription of 'death' as one of the sentences for the offence of 'kidnapping for ransom' was to curb the menace of cross-border terrorism against 'the Government or any foreign State or international intergovernmental organization' to pressurize them to do or abstain from doing any act or to pay a ransom and not to award it in a simpliciter case of kidnapping for ransom of a private individual. The petitioners rely upon the Report dated November 29, 1994 of the 'Committee on Home Affairs' constituted by Rajya Sabha (Annexure P4), the relevant extracts whereof are to the following effect: -

"6. In its note furnished to the Committee, the Ministry of Home Affairs explained the background and the necessity for amending section 364-A of the Indian Penal Code, 1860, as under:-

- (i) *An International Convention Against the Taking of Hostages was adopted by the General Assembly of the United Nations on 17th December, 1979. The Convention was adopted in the background of Iranian hostage crisis and aimed at fighting international terrorism. The Convention entered into force on 3rd June, 1983.*
- (ii) *As per the Convention, if any person seizes or detains and threatens to kill, to injure or to continue to detain another person in order to compel a third party, namely, a State, an International inter-governmental organization,*

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a natural or juridical person or a group of persons to do or abstain from doing any act as an explicit or implicit condition for the release of the hostages, it will constitute the offence of hostage taking.

- (iii) *Indian acceded to the Convention with effect from 7th September, 1994.*
 - (iv) *At present, the offence of hostage taking is not defined in the Indian law. However, vide Criminal law (Amendment) Act, 1993, Section 364A was added to the Indian Penal Code to make kidnapping for ransom etc. an offence punishable with death or imprisonment for life and also fine. This provision read with other provisions of the Indian Penal Code on abetment and attempt, would already cover hostage taking, as defined in the Convention to the extent that this Act is confined to the territory of India. Section 364A IPC does not take care of situations where the offence is committed with a view to compelling foreign States or international inter-governmental organization to do or abstain from doing any act or to pay a ransom.*
 - (v) *Hence, the Indian Penal Code (Amendment) Bill, 1994 seeks to amend the said section 364A on kidnapping for ransom, etc. to make it clear that kidnapping a person to compel the Government or any foreign State or international inter-governmental organization or any other person is punishable under that section."*
- (iii) The phrase "person" occurring in Section 364-A IPC and defined by Section 11 IPC excludes an individual and is meant for a juristic person, company or association, or body of persons

only. It was strenuously argued that the very object of amending Section 364-A IPC was to tackle international terrorism, hence the phrase "person" must be given a purposive construction harmonious with the Object of the amended provision. Reference is made to Article 13 of the International Convention which reads as follows:-

"ARTICLE 13

This Convention shall not apply where the offence is committed within a single State, the hostage and the alleged offender are nationals of that State and the alleged offender is found in the territory of that State." (Emphasis applied)

The petitioners rely upon the decision in the **Commissioner of Expenditure (Tax), Gujarat versus Darshan Surendra Parekh (5)**, which said that "in arriving at the true meaning of any particular phrase in a Statute, the phrase is not to be viewed isolated from its context; it must be viewed in its whole context, the title, the preamble and all the other enacting parts of the Statute" and that "all statutory definitions must be read subject to the qualifications expressed in the definition clauses which create them...". The decision of Bombay High Court in **Sundra Bai Dalichand versus Moreshwar Mahadeo Gokhale and another (6)**, defining the phrase "any other person" in Order 5 Rule 16 CPC has also been pressed into aid to say that the expression "any other person" contained in Section 364-A IPC refers to those persons who have been mentioned immediately before the said phrase, namely, "Government or any foreign State or International inter-governmental organization". **Newspapers Ltd. versus State Industrial Tribunal, UP & Ors. (7)**, was also cited to convince that the use of a word in 'plural' in the definition does not by itself exclude the applicability of the Act to an individual as the Act has to be viewed as a whole and its intention determined by construing all the constituent parts of the Act together.

- (iv) Award of death sentence for an offence of kidnapping for ransom is in utter disregard to the International Convention against the Taking of Hostages, 1979 ('Hostages Convention'),

(5) AIR 1968 SC 1125

(6) AIR 1959 Bom 178

(7) AIR 1957 SC 532

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adopted by the United Nations General Assembly on 3rd June, 1983. The petitioners rely upon Article-2 of the International Convention which says that "*Each State Party shall make the offences set forth in article 1 punishable by appropriate penalties which take into account the grave nature of those offences*". Article 1 of the Convention reads that :-

“ARTICLE 1

1. *Any person who seizes or detains and threatens to kill, to injure or to continue to detain another person (hereinafter referred to as the “hostage”) in Order to compel a third party, namely, a State, an international intergovernmental organization, a natural or juridical person, or a group of persons, to do or abstain from doing any act as an explicit or implicit condition for the release ol.” the hostage Commits the offence of taking of hostages (“hostage-taking”) Within the meaning of this Convention.*
2. *Any person who:*
 - (a) *Attempts to commit an act of hostagetaking, or*
 - (b) *Participates as an accomplice of anyone who commits or attempts to commit an act of hostagetaking likewise commits an offence for the purposes of this Convention.”*

It was vehemently argued that International Conventions are a well recognized piece of international law and the law of the land to the extent of repugnancy with such law can be struck down as ruled in **Jolly George Varghese & Anr. versus The Bank of Cochin (8)**, wherein an apparent conflict between Article 11 of the International Covenant on Civil and Political Rights and Section 51 CPC persuaded their Lordships to observe that :-

“Right at the beginning, we may take up the bearing of Art. 11 on the law that is to be applied by an Indian Court when there is a specific provision in the Civil Procedure Code, authorising detention for non-payment of a decree debt.

The Covenant bans imprisonment merely for not discharging a decree debt. Unless there be some other vice or mens rea apart from failure to foot the decree, international law frowns on holding the debtor's person in civil prison, as hostage by the court. India is now a signatory to this Covenant and Art. 51 (c) of the Constitution obligates the State to "foster respect for international law and treaty obligations in the dealings of organised peoples with one another". Even so, until the municipal law is changed to accommodate the Covenant what binds the court is the former, not the latter. A. H. Robertson in "Human Rights-in National and International Law" rightly points out that international conventional law must go through the process of transformation into the municipal law before the international treaty can become an internal law. From the national point of view the national rules alone count... with regard to interpretation, however, it is a principle generally recognised in national legal system that, in the event of doubt, the national rule is to be interpreted in accordance with the State's international obligations."

- (v) Section 364-A IPC cannot be construed in a manner that 'death penalty' becomes the 'rule' while 'life term' an 'exception' only, more-so when the statute draws no distinction between the first or a habitual offender. Since Section 364-A IPC defines more than one type of 'kidnappings for ransom' with or without international ramifications, its later part describing nature of punishments is relatable to the first part classifying the intensity of 'kidnapping for ransom'. Applying these yardsticks, death penalty in a simpliciter case of 'kidnapping for ransom' is highly excessive. The decision in **Niranjan Karan Singh Punjabi Advocate versus Jitendra Bhimraj Bijja & Anr. (9)**, was cited emphasizing that when the law visits a person with serious penal consequences, extra care must be taken to ensure that those whom Legislature did not intend to be covered by the express language of the Statute are not roped in by stretching the language of the law.

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- (vi) The petitioners could not be held guilty of the offence under Section 364-A IPC as there was no evidence or a finding that they compelled any Government or a foreign State or an International Inter-governmental Organization to do or abstain from doing any act or to pay a ransom. Reliance is placed on a Division Bench decision of this Court in **Vinod Kumar versus State of Haryana (10)**, where a three-years' old girl-child was kidnapped and a ransom of Rs.10 lacs was demanded. However, one of the kidnappers was arrested while entering the STD booth to demand the ransom from the father of the victim and on his disclosure statement his co-accused along with the kidnapped child was also arrested. The kidnapped child was fortunately found unharmed. A Division Bench of this Court though dismissed the appeal of the accused but relying upon a previous decision in **Balwant Singh versus State of Haryana (11)**, converted the conviction from Section 364-A to Section 364 IPC observing that there was no evidence to connect that the appellants compelled any government or a foreign State or an international inter-governmental organization to do or abstain from doing any act or to pay any ransom.

(9) Countering these contentions, Dr. Sidhu, learned Assistant SG and learned counsel for the States of Punjab & Haryana have questioned the very maintainability of this writ petition.

(10) The dismissal of this writ petition *in limine* could be well justified simply on the ground that the petitioners along with their co-accused Sonia have been concurrently held guilty of the substantive offence under Section 302 IPC and awarded death sentence for the said offence, independent of their conviction and sentence under Section 364-A IPC. The counsel for the Union and States rightly contended that this circuitous route of challenging *vires* of Section 364-A IPC is merely a cloak to delay the execution of death warrants for even if the challenge to 'death sentence' under Section 364-A succeeds, the same sentence awarded for the offence under Section 302 IPC still sustains and is final.

(10) 2006 CrI. L.J. 170

(11) (2002) 2 R. CrI R. 369

(11) Similarly, the plea whether Section 364-A IPC is attracted or a convict thereunder could be sentenced to death without following the test of '*rarest of rare cases*' preceded by 'special reasons', was very much available and unsuccessfully raised by the petitioners or that they are now estopped from re-agitating the same issue, also carries weightage. We say so for the reason that while deciding the petitioners' appeal vide judgement dated January 25, 2010 (Annexure P2), the Hon'ble Supreme Court in para 26 referred to the aim and object of inserting Section 364-A by virtue of Amendment Act No.42 of 1993 and thereafter held as follows:-

"...A plain reading of the Objects and Reasons which led to the amendment shows the concern of Parliament in dealing with kidnapping for ransom a crime which called for a deterrent punishment, even in a case where the kidnapping had not resulted in the death of the victim. The statistics further reveal that kidnapping for ransom has become a lucrative and thriving industry all over the country which must be dealt with, in the harshest possible manner and an obligation rests on Courts as well. Courts to lend a helping hand in that direction. In the case before us, we find that not only was Abhi Verma kidnapped for ransom which act would by itself attract the death penalty but he was murdered in the process. It is relevant that even before the aforesaid amendments, this Court in Henry's case (supra) observed that death sentence could be awarded even in a case of kidnapping and murder based on circumstantial evidence..." (Emphasis applied)

(12) The Hon'ble Supreme Court expressly dwelled upon the quantum of sentence keeping in view its previous decisions and summed up to say that:-

"24. Some of the judgments aforesaid refer to the ongoing debate as to the validity and propriety of the death sentence in a modern society. There are the moralists who say that as God has given life, he alone has the right to take it away and this privilege cannot be usurped by any human being. There are others who believe that the death sentence

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*cannot be taken as a retributive or deterrent factor as the statistics show that the possibility of a death sentence has never acted as a deterrent to serious crime. The theory which is widely accepted in India, however, is that as the death penalty is on the Statute Book it has to be awarded provided the circumstances justify it. The broad principle has been laid in Bachan Singh's case (supra) as the "rarest of the rare cases". Bachan Singh case has been followed by a series of judgments of this Court delineating and setting out as to the kind of matters that would fall within this category. In **Machhi Singh & Ors. Vs. State of Punjab** (1983) 3 SCC 470 this Court gave an indication as to what could constitute this category..."*

(13) It is manifest from the extracted part of the final judgement that the Apex Court considered the nature of offence committed by the petitioners, its gravity and the befitting punishment consistent with the legislative object sought to be achieved by incorporation of Section 364-A in the year 1993. It necessarily implies that the plea now sought to be raised that Section 364-A IPC is attracted only when the offence is committed against Government or a foreign country etc. or no such offence was made out in case of the petitioners, did not find favour with the highest Court.

(14) Be that as it may, owing to the intense and importance of the legal issues raised by the petitioners, we deem it appropriate to express our views on merits as well.

(15) The offence of 'kidnapping or abducting in order to murder' as defined in Section 364 IPC was found inadequate to curb the growing menace of such kidnapping or abducting for ransom, hence Section 364-A IPC was inserted by Act No.42 of 1993 w.e.f. 22nd May, 1993. The nature of offence has been further widened by Act No.24 of 1995 w.e.f. 26th May, 1995 whereby the existing phrase "the government or any other person", has been substituted with an expanded expression "the government or any foreign state or international inter-governmental organization or any other person".

(16) The Statement of Objects and Reasons for the Amendment Act No.42 of 1993 clearly expounds that the amendment was brought as “kidnappings by terrorists for ransom, for creating panic amongst the people and for securing release of arrested associates and cadres have assumed serious dimensions for which the existing provisions of law were proved to be inadequate”. On the other hand, the object of further amendment of Section 364-A IPC vide Amending Act No.24 of 1995 was to bring the domestic law consistent with the International Convention against the Taking of Hostages adopted by the General Assembly of the United Nations on 17th December, 1979 and to which India acceded to w.e.f. 7th September, 1994 only. Resultantly, w.e.f. 26.05.1995, the offence of ‘kidnapping for ransom’ not only covered private individuals but also the ones who indulged in compelling the Government or a foreign State or International Inter-governmental Organization to do or abstain from doing any act or to pay ransom also. The petitioner’s claim that the amended provision intended to punish those only with death penalty who commit the offence against Government, any foreign State or International Inter-governmental Organization, is thus totally farce and contrary to the legislative history of Section 364-A IPC.

(17) ‘Death’ was one of the sentences prescribed for the offence of a private individual’s ‘kidnapping for ransom’ from the very inception of Section 364-A IPC in the year 1993. It has neither been omitted nor diluted by the subsequent amendment. The challenge to the ‘retrospectivity’ of the provision is totally deceptive and misleading as nothing has been added or deleted in Section 364-A IPC after 14th February, 2005, namely, the date of commission of offence by the petitioners.

(18) The avowed object behind the sentence provided in Section 364-A IPC again drew attention of the Hon’ble Supreme Court in a recent decision in **Akram Khan versus State of West Bengal (12)**, where on consideration of the Objects and Reasons behind Amendment Act No.42 of 1993, it ruled that:-

“...It is clear from the above the concern of Parliament in dealing with cases relating to kidnapping for ransom, a crime which called for a deterrent punishment, irrespective of the fact that kidnapping had not resulted in death of the victim. Considering the alarming rise in kidnapping young children

for ransom, the legislature in its wisdom provided for stringent sentence. Therefore, we are of the view that in those cases whoever kidnaps or abducts young children for ransom, no leniency be shown in awarding sentence, on the other hand, it must be dealt with in the harshest possible manner and an obligation rests on the courts as well..."

(19) Defining an act as 'offence' is predominantly the duty of Legislature. The prescription of befitting punishment for such offence is also a legislative policy. Every legislative action shall be presumed Constitutionally valid unless proved otherwise. Challenge to a legislative action to rebut the presumption of its validity is thus permissible on two well-known principles, namely, (i) whether the legislative action offends Fundamental Rights or any other provision of the Constitution; (ii) was the Legislature, who enacted the impugned law, competent to legislate on the subject within the meaning of Article 246 of the Constitution?

(20) The first part of the challenge hovers around centres Articles 14 and 21 of the Constitution as the petitioners claim that in the absence of inbuilt guidelines on proportionality between the 'offence' and the 'sentence' in Section 364-A IPC while the first offender can be awarded death sentence but an habitual, on liberal considerations, may escape the noose. Since the sentencing provision leads to discriminatory consequences, it would equally offend Article 21 also by taking away the life of a person through discriminatory procedure of law. The contention, in our considered view, must fail following the dictum of the Constitution Bench in **Bachan Singh versus State of Punjab (13)**, upholding 'death penalty' in case there are 'special reasons', and that such extreme sentence does not violate Articles 14, 19 & 21 of the Constitution. The ill-founded apprehension of discriminatory award of sentence was also set at rest in **Bachan Singh** laying down that:-

"(a) The normal rule is that the offence of murder shall be punished with the sentence of life imprisonment. The court can depart from that rule and impose the sentence of death only if there are special reasons for doing so. Such reasons must be recorded in writing before imposing the death sentence."

- (b) *While considering the question of sentence to be imposed for the offence of murder under Section 302, Penal Code, the Court must have regard to every relevant circumstance relating to the crime as well as the criminal. If the Court finds, but not otherwise, that the offence is of an exceptionally depraved and heinous character and constitutes, on account of its design and the manner of its execution, a source of grave danger to the society at large, the court may impose the death sentence."*

(21) The mandatory guideline to award death penalty in 'rarest of rare cases' and for 'special reasons' propounded in *Bachan Singh* has been progressively expanded in the later decisions including *Machhi Singh & Ors.* (supra), *Rajesh Kumar versus State through Government of NCT of Delhi* (14), and several other cases. Attune to these very parameters that the award of death penalty under Section 364-A IPC stood to the test of judicial scrutiny by the highest court in *Henry Westmullar Roberts etc. versus State of Assam etc.* (15), *Mohan & Ors. versus State of Tamil Nadu* (16), and in the recent decision in *Akram Khan* (supra).

(22) No meaningful argument was advanced except beating about the bush in reminding us the pious object behind Article 21 of the Constitution or its alleged violation in the instant case. The decision to hang the petitioners to death has been unarguably taken following the procedure established by law. This is not even whispered that Parliament was incompetent to legislate and add Section 364-A in the Indian Penal Code. Thus, the first and second grounds taken by the petitioners are devoid of any merit and must be rejected.

(23) The third contention would fail partly for the reasons assigned while considering contentions No.(i) & (ii) with reference to the Objects & Reasons as well as the legislative history of Section 364-A IPC. Additionally, suffice it to mention that according to Section 11 IPC, the word "person" **includes** any company or association or body of persons whether incorporated or not. The definition is not exhaustive and is inclusive of juristic

(14) (2011) 13 SCC 706

(15) (1985) 3 SCC 291

(16) (1998) 5 SCC 336

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or natural persons and by no means can be restricted to include juristic persons only. Section 11 IPC has to be construed in the context of and with reference to other provisions of the Code and if given artificial construction suggested by the petitioners several Chapters of the Indian Penal Code would be inanimate. The contention completely overlooks the fact that the phrase "any other person" was inserted in Section 364-A IPC at the onset only to punish a private individual's kidnapping for ransom.

(24) The fourth contention has also been partly met with by our reasons against contentions No.(i) & (ii). We may state at the cost of repetition that originally Section 364-A IPC was not inserted towards any commitment to International Convention and it was only after India acceded to the said Convention on 7th September, 1994 that the Amendment Act No.24 of 1995 was passed. The post 1995 amendment in Section 364-A IPC does not advance the petitioners' case in any manner. In *Jolly George Varghese* also, Supreme Court categorically held that "*the remedy for breaches of International Law in general is not to be found in the law courts of the State because International Law per se or proprio vigore has not the force or authority of civil law, till under its inspirational impact actual legislation is undertaken...*". There is, thus, no merit in this as well.

(25) The fifth contention has no factual basis behind suggesting that death penalty is the 'rule' or life imprisonment is an 'exception' for the offence under Section 364-A IPC. In the absence of any definite information or material such like vague and wild discord merits outright rejection. We may, however, hasten to add that the reported decisions of the Hon'ble Supreme Court, a few of which are cited in this order, unambiguously bear out that the vigorous tests applied for awarding death sentence for an offence under Section 302 IPC *mutatis mutandis* are applied while considering the quantum of sentence in a case under Section 364-A IPC too. No instance of awarding death sentence even if the victim of kidnapping for ransom was rescued has been referred to or brought to our notice. Occasion to consider whether the case falls within the known exceptions and is fit for award of death sentence, arises only when the victim has been met with cold-blooded gruesome murder for greed. The decision in *Niranjan Singh Karam Singh Punjabi, Advocate* (supra) is inapplicable in the instant case as that was a case under TADA read with Section 302, 307 and some other offences under IPC and it explains the duties of the Designated Court under the TADA.

(26) The last submission too has no legs to stand and must fall flat. The decision of a Co-ordinate Bench in *Vinod Kumar's* case renders no help to the petitioners for more than one reason. Firstly, the petitioners have been convicted and sentenced to death upto the highest court for the substantive offence under Section 302 IPC also. The quantum of sentence under Section 364-A IPC thus, in no way, changes their fate. Secondly, in *Vinod Kumar's* case, the kidnapped child was recovered unharmed. The award of lesser sentence, on facts, was justified. Thirdly, in *Vinod Kumar's* case as well as in the previous Division Bench decision of this Court in *Balwant Singh's* case, the phrase "or any other person" went unnoticed by the Bench. Fourthly, the plea on quantum of sentence taken by the petitioners has been expressly rejected by the Hon'ble Supreme Court while dismissing their criminal appeal(s) with a finding that soon after kidnapping the victim was reduced to a corpse with the help of chemicals and was done to death in an inhuman, diabolic and dastard manner.

(27) For the reasons afore-stated, we do not find any merit in this writ petition and dismiss the same.

(28) The writ petition instituted on 23rd September, 2012, was heard by us on September 27, 2012. Counsel for the petitioners made a specific mention that in the event of disagreeing with his contentions, some breathing time may be granted to prefer appeal in the Hon'ble Supreme Court. Since death warrants are said to have been issued for execution on October 5, 2012, we, in the peculiar facts and circumstances, direct the Superintendent, Central Jail, Patiala to keep the death warrants in abeyance and not to execute the same till October 12, 2012 to, meanwhile, enable the petitioners to avail their remedy of special leave to appeal.

(29) Let a copy of this order, duly attested by the Bench Secretary of this Court, be handed over to Mr. Naresh Kumar Joshi, learned counsel for Union of India, Ms. Monica Chhibber Sharma, learned DAG Punjab and Mr. Ravi Dutt Sharma, learned DAG Haryana for information and further necessary action as also to counsel for the petitioners on deposit of usual charges.

(30) Dasti as well.