

IN THE HIGH COURT OF JUDICATURE AT PATNA

Ganesh Ram

vs.

The State of Bihar

Criminal Appeal (DB) No.1478 Of 2017

11 September 2024

(Hon’ble Mr. Justice Rajeev Ranjan Prasad
and Hon’ble Mr. Justice Shailendra Singh)

Headnotes

Indian Penal Code---Sections 361 363, 364A---allegation of the offence of kidnapping for the purpose of ransom---appellant convicted by Trial Court for offence—ordered to undergo life imprisonment and fine— Indian Evidence Act---Section 65B---non-compliance with the legal provisions for exhibition of electronic document—no clinching evidence about demand of ransom.

Held: The appellant’s conviction set aside under Section 364A of IPC— convicted appellant under Section 363 IPC—since appellant already served about ten years in incarceration—maximum sentence under Section 363 IPC being seven years—appellant’s release directed.

Appearances for Parties

For the Appellant/s : Mr. Nagendra Kumar Singh, Advocate; Mr. Bijay Kumar Pathak, Advocate; Ms. Anukriti Jaipuriyar, Amicus Curiae

For the Respondent/s : Mr. Dilip Kumar Sinha, APP

Headnotes Prepared by Reporter: Dr. Gopal Krishna, Advocate

Judgment/Order of the Hon’ble Patna High Court

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1478 of 2017**

Arising Out of PS. Case No.-301 Year-2014 Thana- ROSERA District- Samastipur

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Ganesh Ram, Son of Brahmdeo Ram, Resident of Village-Rampur, P.S.-
Bakhari, District-Begusarai. Appellant

Versus

The State of Bihar Respondent

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Appearance :

For the Appellant/s : Mr. Nagendra Kumar Singh, Advocate
Mr. Bijay Kumar Pathak, Advocate
Ms. Anukriti Jaipuriyar, Amicus Curiae
For the Respondent/s : Mr. Dilip Kumar Sinha, APP

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**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)**

Date : 11-09-2024

Heard Mr. Nagendra Kumar Singh, learned counsel for the appellant, Ms. Anukriti Jaipuriyar, learned Amicus Curiae and Mr. Dilip Kumar Singh, learned Additional PP for the State.

2. The appellant has been convicted *vide* judgment dated 02.11.2017 (hereinafter referred to as the ‘impugned judgment’) and sentenced *vide* order dated 06.11.2017 (hereinafter referred to as the ‘impugned order’) by learned Additional Sessions Judge, Rosera, Samastipur in Sessions Trial No. 374 of 2015 arising out of Rosera P.S. Case No. 301 of 2014 (G.R. No. 1030 of 2014) for the offence punishable under Section 364A of the Indian Penal Code (in short ‘IPC’). He has been ordered to undergo life imprisonment with a fine of Rs.10,000/- under Section 364A IPC



and in default of payment of fine, he has to further undergo rigorous imprisonment for three months.

Prosecution Case

3. The prosecution story is based on the written report dated 02.10.2014 (Exhibit '1') submitted by one Sone Lal Mochi (PW-4), resident of village+post- Kariman, P.S.- Rosera, District-Samastipur. In his written report (Exhibit '1'), the informant has stated that his grandson Himanshu Ranjan @ Vishal Kumar aged about 11 years was at his Nani's house in village-Bandiha. On 01.10.2014 at 01:07 pm, Ganesh Ram (this appellant), who is the relative of informant son's Saddu (co-brother), called on mobile no. 8809860491 from his mobile no. 8678847288 and asked Kunti Kumari sister-in-law of informant's son where is Himanshu @ Vishal, send him at Tinbatiya so that we can come at your place. Prior to this, he had inquired about Himanshu from the informant to which the informant said that he is at his Nani's house. On the said call, Kunti Kumari sent the grandson of the informant and from that time, he is missing. The informant and his family members all searched for him all night. The mobile phone of Ganesh Ram was also switched off. On 02.10.2024 at 09:30 when the informant talked on the mobile number of Ganesh Ram, he



demanded Rs.5 lakh as ransom. The informant has recorded the said talk of demand of ransom, which he can produce.

4. On the basis of the written report (Exhibit '1'), Rosera P.S. Case No. 301 of 2014 was against sole accused Ganesh Ram and police started investigation. After investigation, police submitted chargesheet bearing Chargesheet No. 179 of 2014 dated 02.10.2014 under Section 364A IPC against this appellant. On the basis of this chargesheet, learned A.C.J.M took cognizance on 29.05.2015. Upon finding that the offence of which cognizance was taken by the Magistrate is triable by the court of sessions, the case was committed to the court of Sessions where on 24.11.2015, charges were framed under Section 364A IPC against the sole accused which was explained to the appellant in Hindi to which he pleaded not guilty and claimed to be tried.

5. In course of trial, the prosecution examined altogether nine witnesses and exhibited several documents to prove its case. The name of prosecution witnesses and documents exhibited on behalf of the prosecution are mentioned hereunder in tabular form:-

List of Prosecution Witnesses

PW-1	Kunti Kumari
PW-2	Basant Ram
PW-3	Ashok Kumar Ram
PW-4	Sonelal Mochi



PW-5	Himanshu Ranjan Alias Vishal
PW-6	Avinash Kumar
PW-7	Lakhan Ram
PW-8	Baijnath Mandal
PW-9	Naresh Paswan

List of Exhibits

Ext.1	Written Petition (PW-4) of informant	16.01.17	Sd/- Addl. Session Judge 16.01.2017
Ext. 2	Formal F.I.R.	29.08.17	Sd/- Addl. Session Judge 29.08.17
Ext. 3	Signature of P.W. I.O. Naresh Paswan on charge sheet	“	
Ext. 4	CDR Report-1	“	
Ext. 4/1	CDR Report-2	“	
Ext. 5	Statement u/s 164 Cr. P.C.	09.10.17	Sd/- Addl. Session Judge 09.10.17

Findings of Learned Trial Court

6. Learned trial court, after hearing the argument of defence and prosecution as also on perusal of the evidences, found that on the date of occurrence the victim was in custody of the accused (appellant) which was an admitted fact as the accused himself stated in his statement under Section 313 Cr.P.C. that he took away the victim in fair. Learned trial court found that firstly the accused inquired about the victim from the informant who disclosed him that victim is at his Nanihal. In the evidence of Kunti (PW-1), it has come that accused having good relation with Kunti asked her to send the victim at a particular place where she



send the victim on the saying of accused and the victim was recovered from Sonma Pranpur in the custody of accused and she was informed by the grandmother of the victim that demand of ransom was demanded. Learned trial court found that the prosecution witnesses have supported the date of occurrence, time of occurrence and place of occurrence. Learned trial court found from the CDR (Ext. 4 and 4/1) that the accused had talked with informant on 2nd October 2014 at 9:01 am, 9:49 am and 9:55 am. Learned trial court found that the accused had taken away the victim in a fair but after fair accused did not return the victim at his house. Learned trial court though found some contradiction in the evidence of victim but opined that the victim is a minor boy and the occurrence had taken place two years back and at the time of deposition he is aged about 13 years, hence he can forget some fact. Learned trial court found from the evidence of victim (PW-5) that he has supported the factum of demand of ransom from his father and he remained in custody of the accused for three days and the victim was recovered by the I.O. (PW-9) in joint operation with Bakhari Police Station and the demand of ransom was supported by all the witnesses. Thus, learned trial court came to a conclusion after going through the oral and documentary evidences available on the record and circumstances of this case



that accused (appellant herein) has committed the offence of kidnapping for the purpose of ransom and accordingly convicted him under Section 364 A IPC and awarded a sentence of imprisonment of life.

Submissions on behalf of the appellant.

7. In this case *vide* order dated 27.08.2024, we appointed Ms. Anukriti Jaipuriyar, learned Advocate of this Court as learned Amicus Curiae to assist this Court. Learned counsel for the appellant was not present that day. Subsequently, when the case was taken up for hearing, learned counsel for the appellant also appeared. This Court has heard both the learned counsel for the appellant and Mr. Satya Narayana Prasad, learned Additional P.P. for the State.

8. Learned Amicus Curiae for the appellant submits that from the oral testimonies of the prosecution witnesses including the victim boy it would appear that this appellant happened to be a relative of the informant. It has come in the evidence of PW-1 that the appellant had visited her house on the occasion of Raksha Bandhan and he had also visited during Durga Puja festival. Evidences are there to show that the victim boy had gone with the appellant for seeing the village fair on the eve of Durga Puja festival. According to learned Amicus Curiae, this is not a case in



which it may be conclusively held that the victim boy was kidnapped.

9. Learned counsel submits that it has further come in evidence that on 02.10.2014, the informant as well as his son both had a talk with the appellant. It is, though stated by these two witnesses that the appellant had asked them to pay a sum of Rs. Five lakhs in lieu of return of the child but none of these two witnesses have stated that the appellant had threatened them that if the ransom money is not paid, then he would kill the victim or cause any kind of hurt. It is submitted that even the victim boy, after his return, in his statement under Section 64 CrPC before the learned Magistrate did not allege that the appellant had put him under threat to his life or that he had any apprehension that hurt may be caused to him if the demanded money is not paid.

10. Learned Amicus Curiae for the appellant has submitted that in this case, the I.O. has though proved the call details report (CDR) of the mobile phone of the son of the informant and the learned trial court has accepted the CDR as Exhibit '4' and '4/1' respectively but it would appear that the CDR being an electronic document has not been exhibited in accordance with law. There is no compliance with the provisions of Section



65B IPC. It is submitted that Exhibit '4' and '4/1' must be discarded as those have not been duly proved.

11. It has also been submitted that the victim boy is said to have made statement under Section 164 CrPC at the age of nine years. It would appear from his statement under Section 164 CrPC that the learned Magistrate while recording his statement had not tested the competence of the victim to understand the truth and make statement. In this regard, learned counsel submits that the Hon'ble Supreme Court has opined in the case of **Pradeep vs. State of Haryana** reported in **AIR 2023 SC 3245** that before recording the evidence of a minor, it is the duty of a Judicial Officer to ask preliminary questions to him with a view to ascertain whether the minor can understand the questions put to him and is in a position to give rational answers. It is submitted that even though a statement under Section 164 CrPC is not a piece of evidence in its own but the same is referred to, to test the veracity of the evidence of the witness in course of trial. It is also submitted that in this case the learned Judicial Magistrate who had recorded the statement of the victim boy under Section 164 CrPC has not been examined.

12. Learned Amicus Curiae has relied upon the judgment of the Hon'ble Supreme Court in the case of **Ravi Dhingra vs.**



State of Haryana reported in **(2023) 6 SCC 76** and **William Stephen Vs. State of Tamil Nadu and Another** reported in **(2024) 5 SCC 258** to submit that in those two cases, the Hon'ble Supreme Court had occasion to consider the requirements of Section 364A IPC. It is submitted that in this case, the essential ingredient of Section 364A IPC are missing as no threat was given by the appellant either to the informant, his son or to the victim boy to kill or cause any kind of hurt if the demand is not met.

13. It is lastly submitted that in any case, offence punishable under Section 364A IPC is not made out. The appellant has already served a sentence of about ten years, hence an alternative submission has been made that even if an offence punishable under Section 363 IPC is made, in ultimate analysis, the maximum sentence provided under Section 363 IPC being a period of seven years only, the appellant would deserve his release forthwith after acquitting him of the charge under Section 364A IPC.

Submissions on behalf of the State

14. Mr. Dilip Kumar Sinha, learned Additional P.P. for the State has opposed the appeal. It is submitted that the learned trial court has rightly appreciated the evidence of the prosecution witnesses and held that the prosecution has been able to prove the



guilt of the appellant under Section 364A IPC beyond all reasonable doubts. Referring to the evidence of the informant (PW-4), his son (PW-1), the victim boy (PW-5) and the evidence of the I.O. (PW-9), learned Additional P.P. would submit that they are consistent and the defence has failed to impeach them in course of their cross-examination. They are reliable witnesses and the learned trial court has not committed any error in appreciation of the evidences available on the record.

Consideration

15. Having heard learned counsel for the appellant, learned Amicus Curiae and learned Additional PP for the State and on perusal of the trial court's records, we have found that the prosecution case is based on the written report (Exhibit-1) submitted by Sonelal Mochi (PW-4) who is the grandfather of the victim boy. According to the written report, the appellant had given a call from his Mobile No. 8678847228 on the Mobile No. 8809860491 and had inquired about the whereabouts of Himanshu @ Vishal, the victim boy. This appellant had requested the sister-in-law of the son of the informant (PW-1) to send Himanshu at Teenbati so that the appellant may reach to her place. The informant (PW-4) claimed that earlier, the appellant had also called him at his house and had inquired about the victim boy. The



informant alleged that the victim boy did not return on 01.10.2014 and despite hectic search for the whole night by all the family members, neither he nor Ganesh Ram (the appellant) could be traced. The mobile number of Ganesh Ram was coming switched off. On 02.10.2014 at about 09:30 am, the informant talked to the appellant on his mobile then the appellant asked for a ransom of Rupees Five Lakhs. It is thereafter that the informant went to the police station and submitted a written report. In the written report, there is no allegation that the appellant had while making a demand for ransom threatened the informant to cause death or hurt to the victim boy. The informant has not alleged that the conduct of the appellant gave rise to an apprehension in his mind that the victim boy may be put to danger of death or hurt.

16. In this case Kunti Kumari, who is the sister-in-law of the son of the informant has deposed as PW-1. She has stated in her examination-in-chief that she had received phone call from Ganesh Ram who told her to send Vishal @ Himanshu to Teenbatiya Chowk. Himanshu is the son of her sister and was living with her. She has stated that on the asking of the appellant, she has sent Vishal to Teenbatiya Chowk, she had given her three rupees and had told her to purchase *dhaga* (thread). She had told her to purchase thread and bring Ganesh Ram with him. She has



stated in her examination-in-chief that Vishal and Ganesh did not come home for two days. She had informed the father and mother of Vishal whereafter search was conducted and the grandfather of Vishal had lodged the case. In her cross-examination, this witness has stated that she knew the appellant from the time when he had come with her brother-in-law at her house during Raksha Bandhan. Her brother-in-law's name is Babloo Ram and this appellant is the son of mausi of Babloo Ram. In her cross-examination in paragraph '19' this witness has stated that Ganesh Ram had come to her house during Durga Puja holiday. Thus, from her deposition it is evident that this appellant had gone to the house of PW-1 during Durga Puja festival, when the victim boy is said to have taken away. This statement of PW-1 is to be read together with paragraph '14' of the deposition of the victim boy (PW-5) who has stated that Ganesh Ram had told him to deliver the thread at his house and then come back whereafter they would go to visit mela. Victim has stated that because he knew him, therefore he returned his house and after giving thread there, he went away with the appellant for visiting mela. From the evidence of PW-1 at this point of time it appears that the victim boy was taken away by the appellant from the village itself when the appellant had visited the house of PW-1 during Durga Puja festival



and he had not taken away the victim boy with the consent of the parents/guardian who were in the house.

17. The maternal grandfather of the victim has deposed as PW-2 in this case. He has stated that his daughter (PW-1) had sent the victim boy to “Teenbatia” on the asking of the appellant whereafter he did not return. In para ‘6’ of his examination-in-chief, PW-2 has stated that a phone call of Ganesh Ram came on the mobile of his son-in-law Ashok Kumar Ram (PW-3) and a demand of Rs. 5 lakhs was made as ransom. When his son-in-law expressed his inability to give that much amount, the appellant asked him to give Rs. 3 lakhs. This witness has not stated that the appellant had given any kind of threat to PW-3 during the telephonic call.

18. We have noticed from the testimonies of the prosecution witness no.1 that the appellant is Mausera brother of Bablu Ram the brother-in-law of PW-1 and he had earlier visited her house on the occasion of Raksha Bandhan. It has also come in the deposition of PW-1 that the appellant had come to the house of PW-1 in Durgapuja Festival. The father of the victim who has been examined as PW-3 and grandfather of the victim who is also informant of the case and has been examined as PW-4 have not stated in their deposition that the appellant had given any threat to



them if the ransom amount is not paid. PW-3 has stated in paragraph '5' of his examination-in-chief that he was regularly making call to the appellant, and the appellant received the phone once. The appellant changed his voice and allegedly demanded a sum of Rupees Five Lakhs. He asked the appellant to come with money and take back his son. He was told to come at Bakhri Station. PW-3 has stated in paragraph '29' of his deposition that his son had told him that the appellant was keeping him awoken for the whole night and he was not being allowed to sleep and was also not given any food. This witness has admitted that the appellant happened to be his distant relative. He was suggested by the defence that pressure was being built upon the appellant to marry Kunti who is physically disabled and because the appellant had refused to marry her and married at another place so he has been falsely implicated in this case. The defence suggested that the appellant was called during Durga Puja and the victim boy was sent with him to see the fair but later on, the appellant has been falsely implicated. The suggestions were, however, denied. In the entire deposition of PW-3, there is no whisper that at any point of time, the appellant had threatened either PW-3 or the victim boy to cause death or hurt of any kind if the demand is not met.



19. We have further noticed from the evidence of the informant (PW-4) that in paragraph '6' of his examination-in-chief, he has stated that on 02.10.2014 at about 09:30 am, he had a talk with this appellant on his mobile and the appellant had made a demand of Rupees Five Lakhs as ransom. This witness has also not stated that there was any threat to life of the victim.

20. We have found from the evidence of the victim boy who has been examined as PW-5 in this case that he has deposed in the trial court on 14th February, 2017, on that day, he was aged about 13 years. At the time of occurrence in the year 2014, he was aged about 10 years and in his examination-in-chief, he has stated in paragraph '5' that in his presence, the appellant had made a phone call to his father and asked him to come with Rupees Five Lakhs, failing which his son would be killed. We have noticed above that the father (PW-2) has not stated in his examination-in-chief that the appellant had threatened him saying that if the demand is not met, his son would be killed. In our considered opinion, in absence of any corroboration by PW-3 or PW-4 on this point, it would not be safe to accept this part of the testimony of PW-6 as a wholly reliable piece of evidence.

21. We have noticed that the I.O. (PW-9) has stated in his deposition that he had recovered the victim boy in a joint



action taken with the help of Bakhri Police Station from a place ahead Sonma Railway Crossing at Pranpur. The I.O. (PW-9) had arrested the appellant and the victim boy was found with him. The statement of the victim boy was recorded under Section 164 Cr.P.C. by the learned Magistrate. The said statement has been marked Exhibit '5' in course of trial.

22. We have found from the statement under Section 164 Cr.P.C. made by the victim boy that at the relevant time, he was aged about 9 years. The learned Magistrate who recorded his statement under Section 164 Cr.P.C. did not test the capacity of the child witness to understand the questions. In the case of **Pradeep (supra)** the Hon'ble Supreme Court has observed in paragraph '9' which reads as under:-

9. "Before recording evidence of a minor, it is the duty of a Judicial Officer to ask preliminary questions to him with a view to ascertain whether the minor can understand the questions put to him and is in a position to give rational answers. The Judge must be satisfied that the minor is able to understand the questions and respond to them and understands the importance of speaking the truth. Therefore, the role of the Judge who records the evidence is very crucial. He has to make a proper preliminary examination of the minor by putting appropriate questions to ascertain whether the minor is capable of understanding the questions put to him and is able to give rational answers. It is advisable to record the preliminary questions and answers so that the Appellate Court can go into the correctness of the opinion of the Trial Court."

23. We find that, though, he had made a statement that the appellant had demanded ransom from his father but he had



nowhere stated that the appellant had threatened his father or him if the ransom is not made available. In paragraph '4' of his statement under Section 164 Cr.P.C., the victim boy has stated that the appellant was keeping him in a vehicle, he was not being allowed to sleep and he was not being provided food properly but the victim boy has clearly stated that the appellant was not beating him. The learned Judicial Magistrate who had recorded the statement under Section 164 Cr.P.C. has not been examined in this case.

24. The IO (PW-9) had taken out the call detail reports ('CDR') of the mobile phones of the PW-3 and the appellant which have been marked exhibits in the trial court but we agree with the submissions of Ms. Anukriti Jaipuriyar, learned Amicus Curiae that the CDRs (Exhibits '4' and '4/1') have not been duly proved in accordance with Section 65B of the Indian Evidence Act. We, therefore, discard the CDRs (Exhibits '4' and '4/1').

25. At this stage, we take note of the essential ingredients of Sections 361 and 364 which are the charging section punishable under Sections 363 and 364A I.P.C. hereunder:-

"361. Kidnapping from lawful guardianship.

Whoever takes or entices any minor under [sixteen] years of age if a male, or under [eighteen] years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the



consent of such guardian, is said to kidnap such minor or person from lawful guardianship.

Explanation.--The words "lawful guardian" in this section include any person lawfully entrusted with the care or custody of such minor or other person.

Exception.--This section does not extend to the act of any person who in good faith believes himself to be the father of an illegitimate child, or who in good faith believes himself to be entitled to the lawful custody of such child, unless such act is committed for an immoral or unlawful purpose.

364. Kidnapping or abducting in order to murder.

Whoever kidnaps or abducts any person in order that such person may be murdered or may be so disposed of as to be put in danger of being murdered, shall be punished with [imprisonment for life] or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Sections 363 and 364A are the punishing Sections which are as under:-

363. Punishment for kidnapping.

Whoever kidnaps any person from [India] or from lawful guardianship, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine

364A. Kidnapping for ransom, etc.

Whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction, and threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt, or causes hurt or death to such person in order to compel the Government or [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.]”

26. On appreciation of oral testimonies of PW-3, PW-4, PW-5 and PW-9, we find that though the prosecution has been able to prove that the victim boy was kidnapped as he was taken away from the lawful guardian of his father and the ingredients of



Section 363 IPC are satisfied, we find that there is no clinching evidence that there was a demand of ransom in terms of Section 364A IPC.

27. In the case of **Ravi Dhingra (Supra)** and in the case of **William Stephen (supra)**, the Hon'ble Supreme Court had occasion to consider the requirements of Section 364A IPC. Referring to the case laws on the subject in **Ravi Dhingra (supra)**, the Hon'ble Supreme Court observed in paragraph '23, 23.1 to 23.3' as under:-

“**23.** This Court, notably in *Anil v. Admn. of Daman & Diu, Daman*⁶ (“Anil”), *Vishwanath Gupta v. State of Uttaranchal*⁷ (“Vishwanath Gupta”) and *Vikram Singh v. Union of India*⁸ (“Vikram Singh”) has clarified the essential ingredients to order a conviction for the commission of an offence under Section 364-AIPC in the following manner:

23.1. In *Anil*⁶, the pertinent observations were made as regards those cases where the accused is convicted for the offence in respect of which no charge is framed. In the said case, the question was whether appellant therein could have been convicted under Section 364-AIPC when the charge framed was under Section 364 read with Section 34IPC. The relevant passages which can be culled out from the said judgment of the Supreme Court are as under : (SCC pp. 53-54, paras 54-56)

6. (2006) 13 SCC 36 : (2008) 1 SCC (Cri) 72
7. (2007) 11 SCC 633 : (2008) 2 SCC (Cri) 62
8. (2015) 9 SCC 502 : (2015) 4 SCC (Cri) 213



“54. The propositions of law which can be culled out from the aforementioned judgments are:

(i) The appellant should not suffer any prejudice by reason of misjoinder of charges.

(ii) A conviction for lesser offence is permissible.

(iii) It should not result in failure of justice.

(iv) If there is a substantial compliance, misjoinder of charges may not be fatal and such misjoinder must be arising out of mere misjoinder to frame charges.

55. The ingredients for commission of offence under Sections 364 and 364-A are different. Whereas the intention to kidnap in order that he may be murdered or may be so disposed of as to be put in danger as murder satisfies the requirements of Section 364 of the Penal Code, for obtaining a conviction for commission of an offence under Section 364-A thereof it is necessary to prove that not only such kidnapping or abetment has taken place but thereafter the accused threatened 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.

56. It was, thus, obligatory on the part of the learned Sessions Judge, Daman to frame a charge which would answer the description of the offence envisaged under Section 364-A of the Penal Code. It may be true that the kidnapping was done with a view to get ransom but the same should have been put to the appellant while framing a charge. The prejudice to the appellant is apparent as the ingredients of a higher offence had not been put to him while framing any charge.”

23.2. In *Vishwanath Gupta*⁷, it was observed as under : (SCC pp. 636-37, paras 8-9)

“8. According to Section 364-A, whoever kidnaps or abducts any person and keeps him in detention and threatens to cause death or hurt to such person and by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt, and claims a ransom and if death is caused then in that case the accused can be punished with death or imprisonment for life and also liable to pay fine.

7. *Vishwanath Gupta v. State of Uttaranchal*, (2007) 11 SCC 633 : (2008) 2 SCC (Cri) 62



9. The important ingredient of Section 364-A is the abduction or kidnapping, as the case may be. Thereafter, a threat to the kidnapped/abducted that if the demand for ransom is not met then the victim is likely to be put to death and in the event death is caused, the offence of Section 364-A is complete. There are three stages in this section, one is the kidnapping or abduction, second is threat of death coupled with the demand of money and lastly when the demand is not met, then causing death. If the three ingredients are available, that will constitute the offence under Section 364-A of the Penal Code. Any of the three ingredients can take place at one place or at different places.”

23.3. In *Vikram Singh*⁸, it was observed as under : (SCC pp. 522-23, para 25)

“25. ... Section 364-AIPC has three distinct components viz. (i) the person concerned kidnaps or abducts or keeps the victim in detention after kidnapping or abduction; (ii) threatens to cause death or hurt or causes apprehension of death or hurt or actually hurts or causes death; and (iii) the kidnapping, abduction or detention and the threats of death or hurt, apprehension for such death or hurt or actual death or hurt is caused to coerce the person concerned or someone else to do something or to forbear from doing something or to pay ransom. These ingredients are, in our opinion, distinctly different from the offence of extortion under Section 383 IPC. The deficiency in the existing legal framework was noticed by the Law Commission and a separate provision in the form of Section 364-AIPC proposed for incorporation to cover the ransom situations embodying the ingredients mentioned above.”

It is necessary to prove not only that such kidnapping or abetment has taken place but that thereafter, the accused threatened to cause death or hurt to such person or by his conduct gave rise to a reasonable apprehension that such person may be put to death or hurt or cause 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.”

8. *Vikram Singh v. Union of India*, (2015) 9 SCC 502 : (2015) 4 SCC (Cri) 213



28. What has been held by the Hon'ble Supreme Court in the case of **William Stephen** (Supra) in paragraph '10' are being reproduced hereunder for a ready reference:-

“**10.** The first ingredient of Section 364-A is 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 a threat to cause death or hurt to such person, an offence under Section 364-A is attracted. If the first act of kidnapping or abduction of a person or keeping him in detention after such kidnapping is coupled with such conduct of the person kidnapping which gives rise to a reasonable apprehension that the kidnapped or abducted person may be put to death or hurt, still Section 364-A will be attracted....”

29. In result, we set aside the conviction of the appellant under Section 364A IPC and convict the appellant for the offence punishable under Section 363 IPC. Since the maximum sentence provided under Section 363 IPC is a period of seven years only and the appellant has already spent about ten years in incarceration, we direct his release forthwith if not wanted in any other case.

30. We acknowledge the assistance rendered by Ms. Anukriti Jaipuriyar, learned Advocate as learned Amicus Curiae. A consolidated sum of Rs. 15,000/- shall be paid to the learned Amicus Curiae by the Patna High Court Legal Services



Authority within one month from the date of receipt of a copy of
this judgment.

31. This appeal is partly allowed.

(Rajeev Ranjan Prasad, J)

(Shailendra Singh, J)

lekhi/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	17.09.2024
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