

**Gauri Mahto @ Gauri Kumar**

**v.**

**The State of Bihar**

(Criminal Appeal No. 1134 of 2016)

27 February 2025

**[J.K. Maheshwari\* and Aravind Kumar, JJ.]**

### Issue for Consideration

Whether in the facts of the case, *prima-facie* offence u/s.364-A, IPC against appellant is made out or not.

### Headnotes<sup>†</sup>

**Penal Code, 1860 – s.364-A – Kidnapping for ransom, etc. – Offence u/s.364-A, if *prima-facie* made out against appellant:**

**Held:** No – No investigation was conducted to determine whether the house from where the child (PW-12) was recovered belonged to appellant or not – Appellant was not identified either by the father (PW-13) of the child or the child himself – No cogent evidence regarding any ransom demand made by the appellant – Furthermore, the child in his testimony did not depose anything to the effect that appellant had threatened him to cause death or hurt – Prosecution’s case suffers with infirmities and creates serious doubt insofar as the involvement of appellant in the present crime is concerned – It failed to prove conditions together as envisaged u/s.364-A, in particular, paragraph 33 of the judgment of this Court in *Shaik Ahmed* case – Judgment of sentence and conviction passed by the 1st Additional Sessions Judge, confirmed in appeal by the High Court, set-aside. [Paras 12-14, 15]

**Penal Code, 1860 – s.364-A – Kidnapping for ransom, etc. – Three essential ingredients – Discussed.** [Para 10]

**Words and Phrases – ‘and’ after the first condition in s.364-A, Penal Code, 1860 – Significance, stated.** [Para 10]

### Case Law Cited

*Shaik Ahmed v. State of Telangana* [2021] 6 SCR 462 : (2021) 9 SCC 59 – relied on.

\* Author

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Penal Code, 1860.

**List of Keywords**

Section 364-A of Penal Code, 1860; Kidnapping for ransom; Conditions under Section 364-A of Penal Code, 1860; Loot; Child Kidnapped; Ransom note; No ransom demand; No threat to cause death or hurt to the child.

**Case Arising From**

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 1134 of 2016

From the Judgment and Order dated 22.07.2015 of the High Court of Patna in CRLAP No. 1051 of 2009

**Appearances for Parties**

*Advs. for the Appellant:*

Ms. Fauzia Shakil, Ms. Tasmiya Taleha.

*Advs. for the Respondent:*

Samir Ali Khan, Anil Kumar Verma.

**Judgment / Order of the Supreme Court****Judgment**

**J.K. Maheshwari, J.**

1. Challenging the judgment of conviction and sentence dated 22.07.2015, for the offence under Section 364A of Indian Penal Code, 1860 (in short “**IPC**”) passed by the High Court of Judicature at Patna in Criminal Appeal (DB) No. 1051 of 2009 confirming the judgment dated 27.10.2009 passed by the 1<sup>st</sup> Additional Sessions Judge, Barh, in Sessions Trial No. 1046 of 2004, the present appeal has been filed by appellant-convict. The appellant has been sentenced to undergo life imprisonment with fine of Rs. 5000/-, and in case of default, further sentence of three months.
2. The prosecution case in nutshell is that, on 24.10.2002 at about 8.30 p.m., three unknown accused persons armed with deadly

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weapons stormed into the house of Rajendra Kumar (the informant, PW-13) and committed loot taking away some cash and golden ornaments. In the said incident, they also tied the informant and his wife Suma Kumari (PW-15) and kidnapped their elder child namely Unnat Raj (PW-12), aged eight years with a threat to kill the boy in case the informant raised any hue and cry or inform the police. As alleged, the accused persons also left a ransom note demanding Rs. 6 lacs to be delivered near Rampur Dumra station by 30.10.2002, failing which, the boy would be killed.

3. It is further the case of prosecution that while leaving, the accused persons confined the informant and his wife in separate rooms bolting the doors from outside. The informant somehow freed himself and rushed to the roof, wherefrom he saw the accused persons under the streetlight fleeing away with the child. On the said basis, FIR was lodged and during course of investigation, present appellant along with 6 other accused persons namely Sudhir Mahto, Diwakar Yadav, Dayanand Mahto, Pramod Kumar, Dhurba Yadav and Awdhesh Yadav @ Gama Yadav were charge-sheeted for offences punishable under Sections 364A/395/120(B)/34 of IPC. The trial was conducted and present appellant along with one Sudhir Mahto was convicted for offence under Section 364A of IPC, whereas, acquitted for other offences.
4. During trial, the prosecution examined 15 witnesses to answer whether the child was illegally taken away from lawful guardianship or not. The Trial Court largely relied on the testimony of Rajendra Kumar (PW-13, informant/father of the child), Suma Kumari (PW-15, mother of the child) and Unnat Raj (PW-12, kidnapped child) alongside documentary evidence brought on record and held that the child was illegally taken away from the lawful guardianship of the parents. All the three witnesses were consistent qua the incident of kidnapping on the date of incident. So far as question as to who were involved in the alleged occurrence, the Trial Court primarily considered the testimony of Krishna Chandra (PW-11, Investigating officer), who deposed that the ransom demanded from the parents of the child, had to be handed over to the kidnappers at the nearby temple at Barahiya railway station by a man clad in white shirt, full pant and a *gamchha* who was to travel by Vikramshila train. Thereafter, the trap was set and when three miscreants came to collect the ransom,

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one person namely Pramod Kumar @ Pramod Mahto was nabbed, while the other two escaped.

5. On interrogation, Pramod Kumar in his confessional statement disclosed the names of present appellant, Nandan Mahto, Md. Ajam, Dewakar Yadav, Dhurba Yadav and Vikas Das being involved in the alleged crime. He further disclosed that the boy is with Gauri Mahto (present appellant) and if raid is conducted, the boy may be recovered. Accordingly, a raid was conducted on the house of appellant, but the boy was not found there, whereafter, on further disclosure by Pramod Mahto, another raid was conducted on second house of appellant and the boy was found sleeping in a room situated on the roof of the house. The present appellant and co-accused Sudhir Mahto @ Sudhir Kumar were also found in the room. The recovery of the child was made in the presence of independent witnesses, the informant/father and the seizure memo of articles ('Ex. 7') was prepared. In the entirety of facts, the Trial Court held that recovery of kidnapped child was from conscious possession of the appellant from his house in his presence and is sufficient for conviction under Section 364A of IPC. Being aggrieved and on filing appeal, the same came to be dismissed by High Court vide impugned judgment confirming the findings of the Trial Court.
6. The learned counsel for the appellant strenuously argued that in the present case, the essential ingredients of Section 364A are not fulfilled, therefore, conviction as directed cannot be sustained. For an offence under Section 364A, the essential ingredient is of detention of the kidnapped person along with threat to cause hurt or death or reasonable apprehension that death or hurt may be caused to such person. Both these conditions are to be read together and not in isolation. Additionally, there must be a demand of ransom by such individual. In the present case, it has not been proved that any such demand was made by the appellant.
7. The entire case of the prosecution against appellant is based on the confessional statement of co-accused namely Pramod Kumar @ Pramod Mahto, which is not a substantive piece of evidence. Further, neither the informant Rajendra Kumar (father of the child) who had accompanied the investigation officer in the raid, nor the kidnapped child Unnat Raj (PW-12) had identified the appellant and the recovery of the child also appears doubtful. Therefore, it was prayed that the appeal be allowed, and conviction be set-aside.

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8. Learned counsel for the State supported the findings of the Courts below and submitted that on raid, the child was found sleeping in the room on the roof of the house of appellant. The appellant and co-accused Sudhir Mahto were also found present there. The recovery of the child was made from the conscious possession of the appellant in the wee hours of the day as per information furnished by co-accused Pramod Mahto, who came to collect the ransom near the temple at Barahiya railway station, where he was nabbed by police. After recovery, Ex. 7 (seizure memo) was prepared, which was signed by the appellant and two independent witnesses namely, Sanjay Mahto (PW-1) and Sadanand Kumar (PW-2). This confirms the presence of appellant on the spot. The child was handed over to the informant and *zimmanama* was prepared. The testimony of the independent witnesses along with Ex. 7 and *zimmanama* fully corroborates the testimony of I.O. Krishna Chandra (PW-11) and the confessional statement. It was therefore urged that no interference is warranted in present appeal.
9. After having heard the learned counsel for the parties at length and having perused the material placed on record, in connection to the case of prosecution, the first and foremost question that calls for our consideration is, whether in the facts of the case, *prima-facie* offence under Section 364-A of IPC against appellant is made out or not? To answer the same, Section 364-A need to be perused, which is quoted herein 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 organization or any other person to do or abstain from doing any act or to pay a ransom, shall be punishable with death, or imprisonment for life, and shall also be liable to fine.”*

On bare reading, it is clear that the afore-mentioned Section deals with ‘kidnapping for ransom’ a person and to convict an individual

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for the said offence, fundamentally three essential ingredients need to be fulfilled; **first**, a person is kidnapped or abducted, and is kept in detention after the kidnapping or abduction; **second**, there is a threat to cause death or hurt to the kidnapped person, or a reasonable apprehension of such harm is created; **third**, the act is done to compel the government or a foreign state or international inter-governmental organization or any other person to do or not do something, or to pay a ransom.

10. This Court in its recent judgment in '**Shaik Ahmed Vs. State of Telangana**, (2021) 9 SCC 59', re-iterated the pre-requisites required to be proved by prosecution to establish culpability for offence under Section 364-A. In paragraph 33 of the said judgment, the Court noticed as under –

*“33. After noticing the statutory provision of Section 364-A and the law laid down by this Court in the above noted cases, we conclude that the essential ingredients to convict an accused under Section 364-A which are required to be proved by the prosecution are as follows:*

- (i) Kidnapping or abduction of any person or keeping a person in detention after such kidnapping or abduction; and*
- (ii) 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;*
- (iii) causes hurt or death to such person in order to compel the Government or any foreign State or any Governmental organization or any other person to do or abstain from doing any act or to pay a ransom.*

*Thus, after establishing first condition, one more condition has to be fulfilled since after first condition, word used is “and”. Thus, in addition to first condition either Condition (ii) or (iii) has to be proved, failing which conviction under Section 364-A cannot be sustained.”*

From above, it can be inferred, the usage of word 'and' after the first condition in Section 364-A, signifies that the first condition is not independent, and should not be read in seclusion or isolation with the other conditions prescribed therein. Therefore, for conviction

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under this Section, what is to be ensured is that first condition, i.e., the act of kidnapping or abduction or detention after such kidnapping or abduction shall either be coupled with a threat to cause death or hurt or with such conduct creating reasonable apprehension of death or hurt in the mind of person so kidnapped or abducted; or causes hurt or death in order to compel the Government or any foreign State or any Governmental organization or any other person to do or abstain from doing any act or to pay a ransom.

11. In view of the foregoing discussion, we now proceed to consider whether the findings of the Trial Court and the High Court are in consonance with the ingredient specified under Section 364-A and dictum of this Court in *Shaik Ahmed (supra)*, in particular, paragraph 33 to sustain conviction as directed.
12. In the context of the ingredients required to be proved, if we look into the evidence brought, then it is apparent that Rajendra Kumar (PW-13) - informant/father of the child, Suma Kumari (PW-15) - mother of the child and the kidnapped child, namely, Unnat Raj (PW-12) in their testimony have not identified the accused. The conviction is primarily based on the oral evidence of the Investigating Officer, Krishna Chandra (PW-11). On examination of material placed, it is found that the main allegation against the present appellant is based on the confessional statement of the co-accused Pramod Kumar Mahto, who is absconding. The said co-accused in his confessional statement disclosed that the child is in the house of the present appellant and on conduct of raid, the child was recovered. However, on perusal of records, it is seen that no investigation was conducted to determine whether the house from where the child was recovered belonged to appellant or not. It is undisputed that, the recovery was made from the second house and not from the original/first house of the appellant. Furthermore, seizure memo (Ex. 7) did not contain any information qua recovery of child. It is also admitted that in the identification parade conducted by the police, the appellant has not been identified by the father (PW-13). The child also has not identified the appellant in the Court, despite the allegation that the child was with the appellant for about 15 days.
13. Coming to aspect of demand of ransom, it is found out from the records that Suma Kumari (PW-15) after 15 days of incident, on 08.11.2002 informed the police that her devar, Jitender Kumar, received a phone call from phone no. 262694 on his mobile no. 9835231064 demanding

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ransom of Rs. 4 lakhs to be delivered at railway station Barahiya, for release of child. Rajendra Kumar (PW-13) has deposed that he received ransom notes demanding approximately Rs. 4 to 5 lacs. At this juncture, it is pertinent to note that the entire case of the prosecution is based on the testimony of Krishna Chandra (PW-11) - Investigating Officer, however, interestingly as borne out of records that, neither he has deposed anything about ransom notes nor about any investigation regarding phone call made by the kidnappers. The prosecution has also failed to bring on record any cogent evidence regarding any ransom demand made by the appellant.

14. Lastly, to sustain the conviction of appellant for offence under Section 364-A, it is to be seen that whether any threat to cause death or hurt to the child was made by appellant or not? As per prosecution's case, the kidnapped child was with appellant for a period of 15 days and on raid, he was found sleeping in the room of the house belonging to the appellant. After considering the medical report, it is found that, the child had only simple injury in the nature of abrasion. Furthermore, the child (PW-12) himself in testimony has not deposed anything to the effect that appellant had threatened him to cause death or hurt. Under such circumstances, the prosecution's case suffers with infirmities and creates serious doubt insofar as the involvement of appellant in the present crime is concerned.
15. In view of the discussion made above, thus, we are of the considered view that the prosecution has failed to prove conditions together as envisaged under Section 364-A, in particular, paragraph 33 of the judgment of this Court in *Shaik Ahmed (supra)*. Accordingly, this appeal is allowed. The judgment of sentence and conviction dated 27.10.2009, passed by the 1<sup>st</sup> Additional Sessions Judge, Barh, confirmed in appeal by the High Court vide impugned judgment dated 22.07.2015 are set-aside.
16. The sentence of the appellant has already been suspended vide this Court's order dated 11.01.2019. As a sequel to the acquittal, the appellant need not surrender. His bail bonds stand discharged.

*Result of the case:* Appeal allowed.