

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of decision : 09th December, 2009

+ **CRL. A. No. 980/2005**

IMRAN ANSARI Appellant
Through : Mr.Rajesh Mahajan, Advocate

versus

STATE Respondent
Through : Ms. Richa Kapoor, Advocate

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE SURESH KAIT

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

PRADEEP NANDRAJOG, J. (Oral)

1. Vide impugned order dated 16.07.2005 the appellant has been convicted for the offence punishable under Section 364-A IPC.
2. Trial of co-accused Nasir Ahmed was referred to the Juvenile Justice Board inasmuch as Nasir Ahmed was a juvenile when the crime was committed.

3. With reference to the testimony of Prithvi Sagar PW-4 and Smt. Sanju PW-5 (we note that two witnesses have been examined as PW-4 and PW-5), the learned trial judge has concluded that the testimony of the said two witnesses clearly establishes that the appellant and his juvenile co-accused had kidnapped Master Prithvi Singh.

4. With reference to the testimony of Anil Kumar PW-2 and Smt. Meenu PW-3, the two being the parents of Master Prithvi Sagar, the learned trial judge has returned a finding that it has been established that ransom in sum of Rs.5 lacs was demanded to free the victim.

5. Conceding before us that the testimony of PW-2, PW-3, PW-4 & PW-5 is without any blemish, learned counsel for the appellant restricts submission to the plea that one of the essential ingredients of Section 364-A IPC has not been proved and hence urges that at best what has been proved is that the appellant has committed an offence punishable under Section 363 IPC.

6. It is urged that one essential ingredient, out of the many, to constitute the offence punishable under Section 364-A IPC,

is extending threats to cause death or hurt to the victim or such conduct of the accused as gives rise to a reasonable apprehension that the victim may be put to death or hurt. It is urged that this ingredient has not been established.

7. Having perused the testimony of the witnesses, we find that none of them has stated that any threat was extended to cause the death or cause hurt to the victim in case ransom was not paid. There is no evidence of conduct of the accused wherefrom it can be gathered and inferred that by said conduct the appellant gave rise to a reasonable apprehension that the victim would be put to death or hurt.

8. In the decision reported as JT 2007 (5) SC 48 Vishwanath Gupta vs. State of Uttranchal, while considering the jurisdiction of the court where the offence pertaining to Section 364-A IPC could be tried, analyzing Section 364-A IPC, in para-6 the Supreme Court categorically opined that a threat to cause death or hurt to the victim is an essential ingredient of the said Section and hence the place where such threat was extended would be the place where part cause of action would accrue.

9. A co-ordinate Bench of this court in the decision reported

as 149 (2008) DLT 306, Rafiq & Anr. vs. State has likewise, in para-10, held that an essential ingredient of the offence of kidnapping for ransom is to give threat of death or hurt to the victim or evidence of such conduct of the accused as would give rise to a reasonable apprehension that the victim would be put to death or hurt. It has been categorically held that ransom demands simplicitor could not bring the offence within the ambit of Section 364-A IPC.

10. Learned counsel for the State submits that Section 364-A IPC has to read disjunctively and the phrase '*or to pay ransom*' means that where there is kidnapping or abduction with a ransom call, then the offence of kidnapping for ransom would be made out.

11. Section 364-A reads as under:-

"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.”

12. Section 364-A IPC can conveniently be broken into different parts as under:-

- i) 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
 - ii) 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 international inter-governmental organization or any other person to do or abstain from doing any act; or
 - iv) to pay ransom,
- shall be punishable with death, or imprisonment for life, and shall also be liable to pay fine.

13. It is important to note that in the first segment of Section 364-A IPC, as fragmented hereinabove: *‘and threatens to*

cause death or hurt to such person' is an inseparable part of kidnapping or abduction. It is apparent that the disjunction takes place firstly at the stage the sentence '*or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt*'. Further disjunctions take place as afore-noted.

14. It is settled law that a penal statute has to be construed strictly.

15. Learned counsel for the State cites AIR 2004 SC 4865, *Malleshi vs. State of Karnataka* to urge that to constitute the offence of kidnapping or abduction it is enough to establish that the accused abducted/kidnapped the victim and demanded ransom.

16. We note that the issue which has arisen for consideration in the instant appeal did not arise for consideration in *Malleshi's* case (supra) and for said reason we do not find that the court has analyzed the various ingredients of Section 364-A IPC.

17. From a perusal of the decision of Supreme Court, it is apparent that what was being urged before the Supreme Court

was that the evidence does not show accomplicity of the accused in the abduction of the victim i.e. PW-2, a student of S.J.M. College. We note that the Supreme Court has categorically noted the testimony of PW-2 that after he was put in a Trax jeep and after crossing Challakera gate, he was threatened not to raise his voice, otherwise he will be murdered. There was evidence of threat being given to the victim of being put to death. Thus, there was no scope for the issue to be debated for the Supreme Court on the interpretation of Section 364-A IPC.

18. The appeal is partially allowed.

19. The conviction of the appellant for the offence punishable under Section 364-A IPC is set-aside.

20. The appellant is convicted for the offence punishable under Section 363 IPC.

21. For the offence committed by the appellant, we sentence him to undergo imprisonment for the maximum term prescribed i.e. 7 years.

22. We note that as per the nominal role of the appellant, he has already undergone actual sentence of 7 years, 2 months

and 6 days as on 13.10.2009. He has earned remission of 1 year, 5 months and 20 days.

23. We accordingly direct that, if not required in any other case, the appellant should be set free forthwith.

24. A copy of this order be sent to the Superintendent, Central Jail, Tihar, Delhi for compliance.

PRADEEP NANDRAJOG, J.

SURESH KAIT, J.

DECEMBER 09, 2009
'nks'