

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA No. D-1933-DB of 2014 and
CRA No. D-1934-DB of 2014 (O&M)

Date of decision: 22.09.2015

Sudhir

....Appellant

versus

Vinod Kumar and another

.... Respondents

CORAM : HON'BLE MR.JUSTICE S.S. SARON
HON'BLE MR.JUSTICE AMOL RATTAN SINGH

Present: Mr. Sandeep Kotla, Advocate
for the appellant.

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

S.S. SARON, J.

The appellant Sudhir son of Baldev, who is the 'victim' in the case has filed both these appeals i.e. CRA No. D-1933-DB of 2014 and CRA No. D-1934-DB of 2014. The said appeals arise out of same FIR No. 40 dated 14.01.2015 registered at police Station City Fatehabad for the offences under Sections 364, 323, 452, 506, 148 and 149 Indian Penal Code ('IPC' for short); besides, Section 25 of the Arms Act, 1959. Criminal Appeal No. D-1933-DB of 2014 has been filed for modifying the judgment of conviction dated

07.11.2014 and order of sentence dated 11.11.2014 of the learned trial Court and for convicting and sentencing respondent No.1 Vinod Kumar son of Bharat Singh for the offence under Section 364 IPC as well. Similarly Criminal Appeal No. D-1934-DB of 2014 has been filed for modifying the judgment of conviction dated 11.03.2014 and order of sentence dated 12.03.2014 of the learned trial Court and for convicting and sentencing respondents No. 1 to 8 in the said appeal as per the charges framed i.e. for the offence under Section 364 IPC also. Vinod Kumar respondent No.1 in CRA No.D-1933-DB of 2014 and respondents No.1 to 6 in CRA No.D-1934-DB of 2014 have been convicted and sentenced for the offences under Sections 365, 323, 452, 506, 148 read with Section 149 IPC. By this common order, both the appeals are being disposed of.

FIR in the case was registered on the statement of the complainant-Ravinder (PW-5) son of Baldev Singh. According to the complainant-Ravinder, the marriage of his younger brother Sudhir Kumar (appellant), who is an advocate, was to be solemnized on 16.01.2005. On the day of occurrence i.e. 13.01.2005 at about 7.30 pm, the hoodlums of the area Rajpal, Subhash, Bhup Singh @ Pappu son of Gupti Ram @ Chandergupt Kilari and Vinod son of Jagat Pal, Vinayak and his brother sons of Bharat Singh, Inder @ Fauji son of Dayala Ram Swami and two sons of Rajpal residents of village Deeng, Devi Lal son of Gehna Singh resident of Mehuwala and 8-10 unknown persons came to their house in four vehicles. They were armed with 'lathis' and 'gandasis'. Rajpal and Vinod were armed with pistols in their hands. All of them entered their

house and by pointing a pistol on the temple of his brother Sudhir picked him up and took him by putting him in a car. Vinod, Bhup Singh, Vinayak etc. also held out threats to kill them. When the complainant side tried to free the brother of the complainant, then the accused inflicted fist blows, besides, slapped them and while abusing they took away his brother. Rajpal proclaimed that in case the matter was reported to the police then they would kill Sudhir (appellant). The complainant lodged a report with the police and prayed that his brother Sudhir be saved and got freed; besides, action be taken against the accused. At the time of occurrence Surender and Ram Murti were present.

On the basis of information given by Ravinder, FIR for the offences as mentioned above was registered by ASI Ram Kumar. The learned trial Court vide order dated 14.03.2007 in the case out of which CRA No.D-1934-DB of 2014 arises framed charges against the eleven accused except Amar Singh (accused No.11 who it is stated has since died) for the offences under Sections 148, 452, 364, 323, 149 and 506 IPC and Amar Singh was charge sheeted for the offence under Section 216-A IPC. Vinod Kumar (respondent No.1 in CRA No.D-1933-DB of 2014) son of Bharat Singh at that time was a proclaimed offender and had been declared as such vide order dated 26.09.2011. He was later arrested and a separate trial was conducted against him, in which he was convicted and sentenced and is now subject matter of CRA No. D-1933-DB of 2014.

The learned trial Courts after considering the evidence and

materials on record vide order dated 11.03.2014 convicted Subhash, Raj Pal, Bhup Singh, Rajesh, Vinod son of Jagatpal, Vinay, Inder Singh and Devi Lal (respondents No. 1 to 8 in CRA No. D-1934-DB of 2014) for the offences punishable under Sections 365, 323, 506, 452 and 148 read with Section 149 IPC. By a separate order passed on 12.03.2014, they were sentenced to undergo rigorous imprisonment for one year, besides, pay a fine of Rs.5,000/- and in default thereof undergo simple imprisonment for three months for the offence under Section 365/149 IPC; undergo rigorous imprisonment for one year, besides, pay a fine of Rs.2000/- and in default thereof undergo simple imprisonment for one month for the offence under Section 452/149 IPC; undergo rigorous imprisonment for three months, besides, pay a fine of Rs.1000/- and in default thereof undergo simple imprisonment for 15 days for the offence under Section 323/149 IPC; undergo rigorous imprisonment for six months, besides, pay a fine of Rs.2000/- and in default thereof undergo simple imprisonment for one month for the offence under Section 506 IPC and undergo rigorous imprisonment for six months for the offence under Section 148 IPC. All the substantive sentences have been ordered to run concurrently. Vinod Kumar (respondent No. 1 in CRA No. D-1933-DB of 2014) son of Bharat Singh has been convicted by the learned trial Court vide order dated 07.11.2014 for the offences under Sections 365, 323, 452, 506 and 148 read with Section 149 IPC. By a separate order dated 11.11.2014, he has been sentenced in the same manner as respondents No.1 to 6 in CRA No.D-1934-DB

of 2014.

The appellant Sudhir aggrieved against acquittal of accused-respondents in the respective appeals for the offence under Section 364 IPC has filed the present appeals.

Learned counsel for the appellant has contended that the learned trial Courts have wrongly held that Ravinder (PW-5) and Sudhir (PW-6) accused had not kidnapped Sudhir with an intention to commit his murder. It is contended that Sudhir (PW-6) stated that Rajpal and Vinod put pistols on his temple and they dragged him by his collar towards their vehicles. When Surender, Ram Murti and his brother Ravinder intervened and tried to save him, Vinod, Subhash, Vinay and others gave a beating to them and threatened that if any action is taken against them, they would kill him. According to learned counsel a threat to kill was made, for which the respondents in the appeals are also liable to be convicted and sentenced for the offence under Section 364 IPC.

We have given our thoughtful consideration to the matter. The learned trial Court has considered the question whether the acts of the accused make out an offence under Section 364 IPC or under Section 365 IPC. It was noticed that in the statement on the basis of which FIR was registered, it had been alleged that the accused abducted Sudhir at pistol point and they caused hurt to the complainant and his other family members, besides, when they tried to rescue Sudhir, the accused held out threats to kill them and they while abusing them took away Sudhir. At that time the accused Rajpal proclaimed that Sudhir would be killed, in case the

matter was reported to the police. Ravinder (PW-5) deposed that when they tried to save Sudhir, accused Vinay, Bhup Singh and Vinod inflicted fist blows to them and slapped them; besides, abused them. They threatened to kill them in case, they tried to save Sudhir. Ravinder further stated that while the accused were leaving, Rajpal held out threats to kill Sudhir, if the police was informed.

In order to ascertain whether the offence under Section 364 IPC is made out against the accused-respondents, the said provision may be noticed. Section 364 IPC reads as under:-

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.

The present is a case of abduction and inasmuch as section 362 IPC defines 'abduction' to mean whoever by force, or by deceitful means induces, any person to go from any place, is said to abduct that person. In order to make out an offence of kidnapping or abduction in terms of Section 364 IPC, the person kidnapped or abducted is to be forcibly taken or enticed in order that he may be murdered or may be so disposed of as to be put in danger of being murdered. The provisions of Section 364 IPC provides for enhanced

punishment where kidnapping or abduction is seemingly apparent to commit murder or the kidnapped or abducted person may be so disposed of as to be put in danger of being murdered. The punishment provided is for the specific offence as indicated in the Section and merely on the basis of suspicion to commit the murder of a kidnapped or abducted person would not constitute the offence. It is primarily the motive which is to be seen and ascertained to make out the offence of kidnapping or abduction, as the case may be. Where the accused commits kidnapping or abduction, the motive for which he has done the criminal act would indeed be a noticeable feature to ascertain and make out the offence. If the motive is based on mere suspicion to commit murder, the offence in terms of Section 364 IPC would not be made out.

The learned trial Courts have held from the evidence on record that the offence under Section 364 IPC was not attracted or proved and the case would fall under Section 365 IPC, as the 'victim' Sudhir (appellant) had been abducted in order to wrongfully confine him.

According to learned counsel for the appellant, threats to kill were held out, which is evident from the deposition of the appellant Sudhir (PW-6) and Ravinder (PW-5). However, the said threats as is contended by learned counsel for the appellant on the strength of the statements of Sudhir (PW-6) and Ravinder (PW-5), are for the purpose that in case the matter was reported to the police, then they would kill him (Sudhir). Therefore, the threat was

not with an intention or motive to commit the murder or otherwise so to dispose of as to put Sudhir in danger of being murdered. The motive for the abduction of Sudhir (appellant) was not with the intention to commit his murder. It was in fact only to prevent his marriage that was fixed for 16.01.2005 being solemnized.

The learned trial Courts have taken a possible view and merely because another view may be taken would not be a ground to interfere with the acquittal of the accused-respondents for the offence under Section 364 IPC.

Insofar as the offence under section 365 IPC is concerned, it may also be noticed that on the next date after kidnapping i.e. on 14.01.2005, in the morning, the complainant received a telephone call from Rajpal (accused), who informed him that he would send a 'panchayat' to compromise the matter and asked him to withdraw the case got registered by him against them, otherwise, they would kill Sudhir. On the same day in the evening, Rajpal again informed the complainant to go to the house of Amar Singh resident of village Najia, where his 'panchayat' would meet him and again repeated the threat given to him. Then on the next day i.e. 15.01.2005 in the morning, the complainant along with Rajinder, Ram Murti, Surender, his father Baldev Singh and two-three other persons went to the house of Amar Singh in village Najia, where they found the 'panchayat' sent by accused Rajpal and others, who asked him to sign the affidavits and written compromise brought by them. They also held out threats that if they did not sign those documents, Sudhir would be killed, upon which, they all signed those documents

under pressure in order to save the life of Sudhir. Thereafter, they asked them to leave and that they would send Sudhir to their village. Thereafter, they all came back to their house at village Bhodia. On the same day at about 9.00 pm, he received a telephone call from the police, which called him at Civil Hospital, Fatehabad. The complainant alongwith Rajender went to Civil Hospital, Fatehabad where Sudhir was found present with the police. The police got Sudhir medico-legally examined at Civil Hospital, Fatehabad and thereafter, they alongwith police and Sudhir went to police Station, City Fatehabad where police got his signatures as well as signatures of Rajender on a document and handed over Sudhir to them.

It is quite evident that Sudhir was released from custody and Sudhir himself stated that he was at some place near village-Deeng on 15.01.2005 at about 9.00 pm.

In the circumstances, the ingredients for the offence under Section 364 IPC have rightly been held to be not made out against the respondents as Sudhir had been released from custody of the accused. The threats held out were either to prevent the marriage of Sudhir or to enter into a compromise. There was no intention and for that matter even no motive for the accused to apparently commit the murder or so dispose of Sudhir as to be put in danger of being murdered. There is nothing on record to hold the offence under Section 364 IPC being committed.

There is no merit in the appeals as regards the acquittal of the respondents in the two appeals for the offence under Section

364 IPC and the appeals are accordingly dismissed. However, nothing stated herein shall be construed as an expression of opinion in the pending appeal filed by the convicts, which have been filed by them against their convictions and the sentences and the learned Court would consider the same on the basis of evidence and material on record.

(S.S. SARON)
JUDGE

22.09.2015
manoj

(AMOL RATTAN SINGH)
JUDGE