

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 930 of 2012

1. Anil Singh Chandel, S/o Samund Singh Aged About 26 Years R/o 87, Harsiddha Nagar, Behind Madhvi Petrol Pump, PS Khajana, Distt. Indore (M.P.)
2. Vishnu @ Devrao S/o Ramesh Rao Aged About 25 Years R/o 294, Vaibhay Laxmi Nagar, Madhvi Petrol Pump, PS Indore, Distt. Indore (M.P.)

---- Appellants

Versus

- State of Chhattisgarh Through PS - Golbazar, Distt. Raipur C.G.

---- Respondent

CRA No. 1075 of 2015

- Rajesh Singh @ Raja S/o Rajendra Singh Aged About 45 Years R/o Ajmer Quarter No. 225/29, Savitri Niwas, Gulab Badi, P.S. Alwar, Civil & Revenue District - Alwar (Rajasthan).

---- Appellant

Vs

- State of Chhattisgarh Through : District Magistrate, Raipur, Civil & Rev. Distt. Raipur Chhattisgarh

---- Respondent

And

CRA No. 1000 of 2012

- Md. Imran @ Sonu S/o Md. Rizwan Khan Aged About 34 Years R/o Dhebar Plaza, P.S. Kotwali, Raipur Distt. Raipur C.G.

---- Appellant

Vs

- State of C.G. Through - P.S. Golbazar , Distt. Raipur C.G.

---- Respondent

For Appellants in CRA	:	Ms. Fouzia Mirza, Advocate
Nos. 930 & 1000 of 2012		
For Appellant in CRA	:	Mr. Keshav Dewangan, Advocate
No. 1075/2015		
For Respondent/State	:	Mr. Ashish Shukla, GA

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Inder Singh Uboweja

CAV JUDGMENT

Delivered on : 28/04/2016

Per, I.S. Uboweja, J.

1. As these three appeals arise out of common judgment dated 18.09.2012 passed by 7th Additional Sessions Judge, Raipur in

Sessions Trial No.141/2010, they are being disposed of by this common judgment.

2. These appeals are directed against the judgment of conviction and order of sentence dated 18.09.2012 passed in Sessions Trial No.141/2010 by 7th Additional Sessions Judge, Raipur, whereby the appellants have been convicted under Section 364A read with Section 34 of the Indian Penal Code (for short, 'the Code') and sentenced to undergo imprisonment for life and to pay fine of Rs.1,000/- each, in default thereof to undergo additional S.I. for three months.
3. Conviction is impugned on the ground that without there being an iota of evidence, the trial Court has convicted and sentenced the appellants as aforementioned and thereby committed illegality.
4. As per case of prosecution, complainant Ganeshram Mehar (PW-2) who is the resident of village-Sonapali, District Nuapada (Orissa) often used to visit Raipur in connection with his business. On the date of incident i.e. 28.01.2010, complainant Ganeshram Mehar came to Raipur for purchase of silver and fabrics. Fifteen days prior to the date of incident, the complainant had shown diamonds to one person namely Khalid for the purpose of sale. That very person named Khalid made a call from the cell phone bearing No. 9437329100 of Ganeshram Mehar on cell phone bearing No. 9437427250 of complainant's father Chetan Mehar that his son Ganeshram was abducted on 28.01.2010 at 9.30 p.m. and if they want to save him,

then the diamonds shown to him (Khalid) earlier or Rs.50 lacs in case of non-availability of those diamonds be given to him and it was also threatened that if they inform the police, Ganeshram would be shot dead. They asked Chetan Mehar to come to Raipur alongwith ransom money. The above information was conveyed by Chetan to his son-in-law Peetambar (PW-1). In the meantime, Khalid again called Chetan Mehar and demanded Rs. 3 lacs as ransom and asked him to come on 30.01.2010 to Raipur Railway Station near ATM. To comply with the demands of the abductors, Peetambar (PW-1) alongwith Trivikram Joshi (PW-3) and Deepak Mehar (PW-4) came to Raipur and lodged a named FIR (Ex.P-1) against Khalid in Police Station – Gol Bazar, Raipur. During the course of investigation, it was revealed that accused Md. Imran is Khalid and he in connivance with other co-accused persons has abducted complainant Ganeshram Mehar and has looted money from him. During the course of investigation, ransom money of Rs.3 lacs was seized from the possession of Peetambar (PW-1) and mobile number, by which ransom was demanded, has also been seized. Receipt of purchase of silver and registration form of business were seized from the complainant Ganeshram Mehar. Site plan of the place of occurrence was prepared. During investigation, the accused persons were arrested and on the basis of memorandum of accused Md. Imran, the vehicle used in the commission of the offence was seized from one G.R. Mehta. From accused Md. Imran, two sets of mobile, cash Rs.4,150/-, one fake pistol and silver ornaments were seized.

However, from the possession of accused Anil Singh Chandel and Vishnu @ Devrao, one mobile each were seized.

5. Statements of the witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 (for short, 'the Code') and after completing usual investigation, charge sheet was filed before the concerned Jurisdictional Magistrate, who having found that there appears to be a *prima facie* offence against the accused persons under Sections 364A, 394 read with Section 34 of the IPC, committed the case to the Court of Sessions, where trial was conducted.
6. By Sessions Court charge being framed under Sections 364A/34 and 392/34 of the IPC was read over to accused/appellants who denied the charges framed against them and abjured their guilt. They pleaded innocence and false implication. The accused/appellants examined one witness i.e. S.R. Kunjam as DW-1 in their defence.
7. Learned trial Court after considering the evidence of the parties available on record by passing impugned judgment, acquitted the accused/appellants under Section 392 read with Section 34 of the IPC but convicted them under Section 364A read with Section 34 of the IPC and sentenced as mentioned above.
8. We have heard learned counsel for the parties and perused the judgment impugned including the record of court below.

9. Learned counsel appearing for the appellants have vehemently argued that the appellants have wrongly been convicted under Section 364A read with Section 34 of the IPC. Although prosecution has utterly failed to prove the case against the appellants, commission of robbery by causing injury by the appellants is not proved, no ransom amount has been taken by any accused and the same has not been seized from them, it was seized from prosecution witness Peetamber (PW-1) himself, therefore, conviction and sentence of the appellants under Section 364A read with Section 34 of the IPC is not sustainable in law. Having argued at length, learned counsel submitted that the appellants deserve acquittal of the charge under Section 364A read with Section 34 of the IPC. In support of their arguments, reliance has been placed in the matter of **Philips Fadrick D'Souza & Anr. vs. State of Maharashtra & Anr.** reported in 2009 CRI.L.J. 89 in which Bombay High Court while dealing with Section 364A of the IPC has held that ingredients for offence of kidnapping for ransom is an aggravated form of kidnapping or abduction – Kidnapping or abduction must be accompanied by administration of a threat of causing death or hurt on the one hand and underlying purpose of kidnapping or abduction on other – Expression “in order to” emphasizes and underlying purpose and intent of kidnapping or abduction is to demand a ransom or to compel the doing of or abstention from doing any act – Purpose must exist at the time when act of kidnapping or abduction takes place – Whether such a purpose existed at that time will have to be deduced from all

attendant circumstance. Further reliance has been placed in the matter of **Rajesh Dalai & Anr. vs. State (Govt. of N.C.T. of Delhi)** reported in **2008 CRI.L.J. 937** in which Delhi High Court has held that delay in recording F.I.R. and non-examination of informant cast doubt on prosecution story, conversation regarding demand of ransom has not been proved and even Maruti van in which victim boy was allegedly kidnapped, is not connected with appellants. Testimonies of witnesses contradict to each other on material aspect and entire prosecution story is unreal and does not inspire confidence. Further reliance has been placed in the matter of **Ram Charitar Sharma vs. State of Jharkhand** reported in **2009 CRI.L.J. 4726** in which Jharkhand High Court has held that appellant and others kidnapped the informant and forced him at point of pistol to write a letter to his father to bring cash, gold ornaments and a pistol and cartridges as ransom for releasing him, but evidence of informant and his mother does not find support from the evidence of his father and alleged letter for demand of ransom was not produced in Court, an adverse inference has to be drawn against prosecution for non-production of said letter. Alleged confessional statement has not been brought on record and has not been proved by the Investigating Officer and seizure witnesses have not been examined and mere recovery of Rs.18,400/- from possession of appellant cannot be a ground for his conviction. Further reliance has been placed in the matter of **Jaganatham Ravi vs. State of A.P.**, reported in **2014 CRI.L.J. 4782**, in which Andhra Pradesh High Court considering the fact that there is

a serious discrepancy as to the period for which kidnapped person is said to have been confined, the evidence on record does not disclose that any attempt to kill him was made at all held that offence under Section 364A IPC is not made out and the act of the accused is punishable under Section 348 IPC only.

10. On the other hand, learned State counsel opposing the appeals would submit that evidence of prosecution witness is sufficient to prove the fact that appellants have commonly intended commission of offence and in-furtherance of such intention they have committed robbery, therefore, prosecution evidence is sufficient for conviction of the appellants.
11. In order to appreciate the arguments advanced on behalf of the parties, we have to examine the evidence adduced on behalf of the prosecution. Case of the prosecution is substantially based on the evidence of Peetamber (PW-1), Ganeshram (PW-2), Trivikram Joshi (PW-3) and Deepak Kumar (PW-4).
12. Prosecution witness Ganeshram (PW-2) is the complainant of this case and he is also a victim of the incident, he is star witness of the prosecution. He stated that he knew the accused persons, on 28.01.2010 at about 9.30 p.m., accused persons kept him in a vehicle and were demanding Rs.50 lacs, probably vehicle was bearing number RJ 14 CH 9254, at about 11-12 p.m. of 30th January, 2010 his close person had given money to them, thereafter, he was

released at Raipur railway station. He further stated that Trivikram Joshi (PW-3) had given money to accused Md. Imran, then they released him. Police had recovered him at railway station.

13. Trivikram Joshi (PW-3) has stated that he along with Peetamber (PW-1) and Deepak (PW-4) came to Raipur after hearing of kidnapping of Ganeshram Mehar, they lodged FIR (Ex.P-1) in Police Station Gol-Bazar, Raipur and deposited Rs.3 lacs before the police because accused Md. Imran had demanded ransom money. He further stated that accused Md. Imran had asked on phone that amount should be brought at Railway Station, he gave Rs. 3 lacs to Md. Imran and then Md. Imran released Ganeshram and he fled away with money by four wheeler vehicle, police chased him and brought him at Police Station Gol-Bazar. According to him, police recovered Rs.3 lacs from accused Md. Imran before him.
14. Deepak Kumar (PW-4) who is son of Ganeshram (PW-2) has stated that his father was kidnapped by Khalid on 28.01.2010 at the place of Ghadi Chowk, Raipur, he alongwith Peetamber and Trivikram came to Raipur and lodged report at Police Station Gol-Bazar, he saw accused Md. Imran in police station in the night at 1.00 a.m. on the same day.
15. Peetamber (PW-1) is a very important witness of prosecution, he stated that his father-in-law Chaitanya and he himself received the phone call of one Khalid, by which he demanded Rs.50 lacs ransom

amount for releasing Ganeshram Mehar. After lodging the report in Police Station Gol-bazar, police took Rs.3 lacs from him and gave the same to Trivikram (PW-3), thereafter police party alongwith Trivikram went to Railway Station, he stayed at police station, at about 11-12 p.m. accused Rajesh Singh and Khalid alias Md. Imran were brought by police, thereafter Rs.3 lacs was seized from Trivikram (PW-3) by police. Accused Md. Md. Imran has admitted that he was also known as Khalid.

16. Investigating Officer, Anand Thakur (PW-13) has deposed that during investigation, on 30.01.2010 he recovered amount from Peetamber (PW-1) and recovery memo (Ex.P-7) was prepared by him. Other witnesses and material on record are not so important for discussing in this case.
17. On close scrutiny of the prosecution witnesses, it is clear that prosecution has failed to prove that any ransom amount was demanded by accused Md. Imran by phone call from Chaitanya and Peetamber (PW-1) because prosecution has not examined Chaitanya and no voice sample was presented before the Court and that voice is not proved according to the provision of Section 65 B of the Indian Evidence Act, prosecution witnesses statements are contradictory on the point of seizure of ransom money. Peetamber (PW-1), Ganeshram (PW-2) and Trivikram (PW-3) have deposed that ransom money was given to accused Md. Imran, but ransom money was not recovered from him and the same was recovered from Peetamber

(PW-1). Investigating Officer Anand Thakur (PW-13) in his statement has deposed that amount was seized from Peetamber (PW-1) and seizure memo (Ex.P-12) was prepared before the witnesses, therefore, it is not proved beyond doubt that ransom amount was seized from accused Md. Imran.

18. Prosecution witness Ganeshram (PW-2) stated that he was lifted by accused Md. Imran and other accused persons in a four wheeler and they demanded money, but this fact was totally unchallenged in his cross-examination and it is proved by the evidence of Ganeshram (PW-2) that he was kidnapped by accused persons and they have wrongfully confined him for the purpose of recovery of the demanded money. Evidence shows that there was a business transaction between accused Md. Imran and Ganeshram (PW-2) and some money dispute arose between them, therefore, prosecution has failed to prove that accused persons kidnapped Ganeshram for any ransom amount, on the other hand, prosecution has successfully proved that accused persons kidnapped Ganeshram and he was in wrongful confinement of accused persons for two to three days, for recovery of money which was demanded by them.
19. After appreciating the evidence available on record the trial Court wrongly held the appellants guilty under Section 364A read with Section 34 of the Indian Penal Code, because it is not a case of kidnapping for ransom, but accused persons are guilty of kidnapping the complainant Ganeshram and keeping him in wrongful confinement

for demanding money from him, therefore, they are liable to be punished under Sections 365 and 347 of the Indian Penal Code.

20. In view of the above, the appeals are partly allowed. Conviction of the accused/appellants under Section 364A read with Section 34 of the IPC is altered to Section 365 and 347 of the Indian Penal Code and they are sentenced to undergo R.I. for two years and to pay fine of Rs.500/-, in default thereof to undergo additional R.I. for two months and to undergo R.I. for two years and to pay fine of Rs.500/-, in default thereof to undergo additional R.I. for two months respectively. Both the sentences will run concurrently.
21. Appellants Md. Imran @ Sonu and Rajesh are in custody since 31.01.2010, they are entitled for set off of the period already undergone by them, they be released forthwith, if not required in any other case. Other accused/appellants Vishnu @ Devrao and Anil Singh Chandel have already served the jail sentence which is imposed upon them, they are on bail, their bail bonds stand discharged.

Sd/-
(Pritinker Diwaker)
JUDGE

Sd/-
(I.S. Uboweja)
JUDGE