

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH**

**CRA-D-995-DB-2010**

**Date of decision:23.03.2017**

Vinod Kumar alias Toni

.....Appellant

Versus

State of Punjab

.....Respondent

**CORAM : HON'BLE MR.JUSTICE T.P.S. MANN  
HON'BLE MR.JUSTICE H.S. MADAAN**

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**Present:** Ms. Ashima Mor, Advocate  
as Legal Aid Counsel  
for the appellant.

Mr. S.S. Dhaliwal, Addl. A.G., Punjab.

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**H.S. MADAAN, J.**

This appeal has been filed against the judgment and order dated 30.08.2010 passed by the Court of Sessions Judge, Jalandhar vide which accused-Vinod Kumar alias Toni was convicted for an offence under Section 364-A of the Indian Penal Code ('IPC' for short) and

sentenced to undergo imprisonment for life and to pay fine of ₹10,000/- and in default of payment of fine, to undergo further rigorous imprisonment for two years.

Accused-convict/Vinod Kumar alias Toni, who is appellant before this Court prays that the appeal filed by him be accepted, the impugned judgment of his conviction and sentence be set aside and he be acquitted of the charge framed against him.

Briefly stated, the prosecution story as it came out during the trial is that on 18.11.2008 at about 06:30 p.m. Arshnoor Singh, aged about 4 ½ years and his younger brother Karanvir Singh, aged about 3 years, both sons of Pritpal Singh and complainant-Prabhjot Kaur, were playing outside their house No.76, Sarabha Nagar, Mohalla Santokhpura, Jalandhar, when a motorcycle of yellow colour having two young persons in the age group of 20 to 25 years old riding it, with pillion rider wearing a cap came there and stopped in front of their house. The riders picked up Arshnoor Singh, made him sit on motorcycle and sped away. Prabhjot Kaur, aged about 28 years, mother of the children and complainant in this case, ran after the motorcycle but she could not read the number of said motorcycle. She had raised alarm but the motorcyclist, taking away Arshnoor Singh could not be nabbed. After sometime Sarbans Singh, father-in-law of the complainant Prabhjot Kaur informed her telephonically that he had received a telephonic call at his shop having No.0181-3293216 from mobile No.97812-50749 that 30 *PETTIES* (₹30 lacs) be arranged and the place where said money was required to be delivered would be disclosed on the next day in the morning. The

complainant alongwith her neighbour searched for Arshnoor Singh, but he could not be traced. Thereafter, the complainant accompanied by her brother-in-law Gurdip Singh was going to Police Station, Division No.8, Jalandhar, to lodge report regarding the incident, on the way, they came across the police party led by ASI Satpal (hereinafter referred to as Investigating Officer/I.O.) in the area near Electricity Board, Hoshiarpur Road, Santokhpura, Jalandhar, where complainant-Prabhjot Kaur wife of Pritpal Singh, aged about 28 years got her statement Ex.PB, recorded with ASI Satpal regarding the incident. In the said statement, she had got it mentioned that her husband Pritpal Singh had gone to Thailand in connection with his business. The statement was signed by the complainant-Prabhjot Kaur in Punjabi. Her signatures were attested by the Investigating Officer, who had appended his endorsement Ex.PB/1 below the said statement sending ruqa to police station through Constable Madan Lal, on the basis of which formal FIR Ex.PB/2 was recorded at Police Station, Division No.8, Jalandhar, under the signatures of SI Baljit Singh. An endorsement on the original ruqa was made and it was sent back to the Investigating Officer. Thereafter, the police party accompanied by the complainant went to the spot, where the Investigating Officer carried out spot inspection. He prepared rough site plan of place of incident as Ex.PC. He recorded statements of witnesses. The police party launched a search for the accused but they could not be traced out.

On the next day i.e. on 19.09.2008, investigation of this case was taken up by SI-Balbir Singh. The police of Police Station, Division No.8, Jalandhar, conducted raid at house of accused-Gaurav Singla who

had been named as one of the accused in this case, but he was not found to be present there. On 19.11.2008, at about 1:40 p.m. SI Balbir Singh received a telephonic call from Balbir Singh, a paternal uncle of the kidnapped child Arshnoor Singh that he had been informed telephonically by someone that Arshnoor Singh had been left by some persons near park of Adarsh Nagar. The police party led by SI Balbir Singh accordingly proceeded to that place and found child-Arshnoor Singh to be there. Several persons had gathered at that place which included Gurdip Singh and Inderjit Singh PWs. The Investigating Officer gave custody of the child to Gurdip Singh as he had identified the said child to be one, who had been kidnapped in this case. A memo regarding handing over of custody Ex.PK was prepared, which was attested by Gurdip Singh and Inderjit Singh PWs. The Investigating Officer recorded statements of witnesses under Section 161 Cr.P.C.. Inderjit Singh disclosed the names of persons, who left the child at that place as Mohit Puri and Vinod Kumar. The police party conducted raid at residential house of Mohit Puri, but he was not found to be present there. Similarly raid conducted at residential house of Vinod Kumar proved futile. However, the police party came across Rajiv Sharma near workshop chowk at about 3:00 p.m. and Rajiv Sharma had made his statement before Investigating Officer. Then the police party returned to Police Station. On 20.11.2008 the police again conducted raid at houses of all the three accused but without any success. However, while the police party was present at Kishanpura Chowk,

there the Investigating Officer received a secret information that all the three accused were going to house of Hans Raj Rana, M.C. on motorcycle No.PB-08-AZ-5689. The police party, accordingly, proceeded towards that place and intercepted all the three accused going on the motorcycle at Pathankot Chowk. All the accused were arrested in this case after confirming their identities. The motorcycle which they were riding was taken into possession vide memo Ex.PD. A mobile phone each was recovered from possession of accused Mohit Puri and Gaurav Singla and taken into possession vide memo Ex.PE and Ex.PF. Thereafter, the police party returned to police station alongwith the accused where the accused were put in the lock up whereas the case property was deposited with MHC.

On the same day accused Mohit Puri was taken out of the lock up and was subjected to interrogation. During the course of such interrogation he disclosed the place where the kidnapped boy was kept. On 21.11.2008 Mohit Puri was produced in the Court of Magistrate and he was sent to the Court of Chief Judicial Magistrate since his birth certificate was produced by counsel representing him to show that he was a juvenile, whereas other accused was remanded to police custody for one day.

On 22.11.2008 the Investigating Officer took out Vinod Kumar accused from police lock up and interrogated him. During the course of such interrogation, accused Vinod Kumar disclosed that he had kept concealed one mobile phone beneath a gunny bag on the roof

of his house and he could get the same recovered. The Investigating Officer recorded his such statement under Section 27 of the Evidence Act. The statement was signed by such accused and attested by ASI Satpal and HC Charanjit. Thereafter accused Vinod Kumar while in police custody led the police party to the disclosed place and got recovered mobile phone from there, that mobile phone MO-1 was taken into possession vide recovery memo Ex.PL attested by Sarabjit and Bakshish Lal, Constables. The Investigating Officer prepared rough site plan of place of recovery as Ex.PM. He recorded statements of witnesses. On return to the police station, he deposited the case property with the MHC and put accused Vinod Kumar in lock up.

Thereafter accused Gaurav Singla was interrogated and then produced in the Court. On 23.11.2008, Rajiv Sharma came to police station and made a statement expressing a desire to get his statement recorded by Magistrate also. Accordingly, the Investigating Officer submitted an application in the Court of Judicial Magistrate for the purpose of recording statement of Sh. Rajiv Sharma under Section 164 Cr.P.C.

After completion of investigation and other formalities challan against the accused Gaurav Singla and Vinod Kumar @ Toni was prepared and filed in the Court of learned Judicial Magistrate Ist Class, Jalandhar.

On presentation of challan in the Court of learned Judicial Magistrate Ist Class, Jalandhar, copies of documents relied upon therein

were supplied to the accused free of cost as provided under Section 207 Cr.P.C.. Thereafter finding that offence under Section 364-A, IPC is exclusively triable by the Court of Sessions, the learned Judicial Magistrate Ist Class, Jalandhar vide his order dated 14.01.2009 committed the case to the Court of Sessions.

When the case was received in the Court of learned Sessions Judge, Jalandhar, finding a prima facie case charge for an offence under Sections 364-A IPC was framed against both the accused, to which they pleaded not guilty and claimed trial. The case was fixed for evidence of the prosecution.

During the course of evidence of the prosecution it examined as many as eleven witnesses as detailed below:-

PW-1 Ms. Sharanjit Kaur, Junior Assistant, DTO, Office, Jalandhar, had brought the summoned record relating to registration of vehicles maintained in the office of DTO, Jalandhar, and stated that as per record brought by her a motorcycle make Glamour bearing No.PB-08-AZ-5689 was registered in name of Ms. Sangeeta Puri wife of Sh. Ramesh Puri resident of MD-195/12-B, Fatehpura, Jalandhar, on 17.04.2007.

PW-2 Smt. Prabhjot Kaur w/o Pritpal Singh-complainant deposed in consonance with the prosecution story testifying that on 18.11.2008 at about 6:30 p.m., her two sons Arshnoor Singh, aged about 4 ½ years and Karanvir Singh, aged about 3 years were playing outside the gate of her house, whereas she was also standing outside,

then two persons came on a motorcycle and kidnapped Arshnoor Singh by taking him alongwith them; that she raised alarm and ran after their motorcycle, then she came back to her house as both those persons had managed to escape; that she made a telephonic call at their shop and the elder brother of her husband namely Gurdeep Singh came to the house. Then both of them were proceeding to police station to lodge report regarding the incident; however, on the way they came across police party near electricity grid, where she got recorded her statement Ex.PB with the police. She stated that she could recognize the persons who had kidnapped her son and pointing out towards the accused having black complexion (Gaurav Singla) present in the Court, she stated that he was driving the motorcycle at that time whereas other person (Vinod Kumar @ Toni) was sitting on the pillion seat.

PW-3 Rajiv Sharma son of Sh.Hari Sharma stated that on 18.11.2008 while he was present at his house, Mohit Puri and Vinod Kumar came to him; they were having a child aged about 4 years with them and they told him that mother of that child was ill and was admitted in Tagore Hospital and that he should keep that child with him during the night and they would take him back in the morning. The witness stated that Mohit Puri and Vinod Kumar had come to him at about 11:30 p.m. and at their request he kept the child with him; that both of them came to him on the next day at about 11:30 a.m. and took the child with them. Thereafter, he went to his work place and when he was taking tea at a tea stall in front of the Tagor Hospital, he found the

photograph of that child in the newspaper and it was mentioned therein that child had been kidnapped. He stated that Vinod Kumar and Mohit Puri were known to him previously and his statement had been recorded by the Police.

PW-4 Sarbans Singh, grandfather of kidnapped boy Arshnoor Singh stated that his shop is situated at Railway Road (Jalandhar) where he sells musical instruments; that about 2/3 months back (statement of this witness was recorded on 03.03.2009) while he was present at his shop then he received a telephonic call at his telephone No.3293216 that he should make arrangement of 30 *PETTIES* (₹30 lacs) in case he wanted to get his grandson released. This witness stated that the telephone number from which the call was made was noted down by him and he had disclosed such number to the police.

PW-5 ASI Satpal who had carried out investigation in the case initially and on 20.11.2008 was member of the police party headed by SI-Balbir Singh deposed regarding his part.

PW-6 Inderjit Singh, aged about 33 years, manufacturer of harmoniums, resident of Tagore Nagar, Jalandhar stated that on 19.11.2008 at about 1:45 p.m., while he was passing through Adarsh Nagar in connection with his work, then two boys Mohit and Vinod came there on motorcycle and left one child in the park of Adarsh Nagar. Gurdip Singh and Balbir Singh came there and they took away that child; that he had seen the photograph of child in question in the

newspaper; that Gurdip Singh and Balbir Singh were already known to him as they were in the same profession (as that of him); that Mohit and Vinod were already known to him as once they had come to him for repair of a harmonium.

PW-7 Hans Raj, aged about 43 years, property dealer, a resident of Santokhpura, Jalandhar deposed that on 19.11.2008 in the evening while he was present outside his house then three boys came to him out of which he did not know the name of two persons whereas name of third boy was Gaurav Singla; that while standing on the road they talked to him that a mistake had been committed by them and told him that they had kidnapped a child and he (this witness) should produce them before the police. The witness stated that they had not disclosed other facts to him; that he told them that he could do that work and they should solve their problem in their own way. Though he had identified accused Gaurav Singla present in the Court but regarding the other two boys accompanying him (Gaurav Singla) he stated that he could not tell if they were other accused, present in the Court.

PW-8 Sarabjit Singh, aged 41 years a resident of Sarabha Nagar, near Santokhpura, Jalandhar deposed that on 18.11.2008 at about 5/5:30 p.m. he left his house and was going to see his son at the shop of Gaurav, which is situated in his locality itself. When he reached that shop, he found two boys at that place who were talking with each other. One of them was of fair complexion and the other was of dark complexion; that except them no one else was present at that

time, both were planning to kidnap a child; that he had heard them talking that they were to kidnap a child and to remove him on motorcycle. He had also heard that they would ask for ransom and they would share the money. He stated that out of these two boys the man with dark complexion was present in the Court and was Vinod Kumar-accused. Since the witness did not support the prosecution story on all the aspects, he was got declared a hostile witness by the Public Prosecutor who was allowed to put questions to him in the form of cross-examination, though without much success rather the witness stated that Gaurav Singla was not present at that shop when he went there.

PW-9 Sauravdeep Singh, Nodal Officer, Spice Communication Limited, Mohali had brought the summoned record relating to mobile phone No.97812-50749 containing the details of the calls made and received on that phone from 01.09.2008 to 19.11.2008 stating that call details had been printed from the master computer of the company in which all the calls made on the mobile phones and received at the mobile phones of the company are recorded. He stated that he had also brought original application form which was submitted by the subscriber to whom connection was released. He proved photocopy of the application Ex.PH and the detailed call sheet Ex.PJ.

PW-10 SI Balbir Singh, who had carried out the investigation in this case w.e.f. 19.11.2008 onwards deposed in that regard proving various documents.

PW-13 (wrongly numbered) Amarjit Singh aged, about 30 years, an embroider, resident of New Baldev Nagar, Jalandhar deposed that on 18.11.2008 at about 6:30 p.m. he was coming from the side of Ambika Colony on the bicycle and was proceeding towards Baldev Nagar and when he reached near Pathian Wala Chowk, then one motorcycle came from opposite side, which was being driven at a high speed; that the driver of that motorcycle tried to strike the same with his bicycle; that there was also one pillion rider and one child was made to sit in between two riders. The pillion rider was wearing a cap and was putting his hand on the mouth of that child. Out of those two riders, the witness identified the motorcycle driver (Vinod Kumar) present in the Court. He stated that when he covered some distance, he found people saying that child had been kidnapped and he told that one child had been removed on motorcycle by two persons; that he had made statement before the police.

With that the prosecution evidence got concluded.

Statements of accused were recorded under Section 313 Cr.P.C. in which all the incriminating evidence appearing against the accused was put to them, but they denied all the allegations containing therein by stating that they are innocent and have been falsely involved in this case; that they had neither kidnapped Arshnoor nor demanded any ransom. The police have planted a false case upon them.

The accused did not lead any evidence in defence.

After hearing arguments, learned trial Court convicted and

sentenced accused-Vinod Kumar @ Toni as mentioned above, whereas accused Gaurav Singla was acquitted of the charge framed against him, as such, accused-Vinod Kumar @ Toni has brought the present appeal.

We have heard learned counsel for the appellant-convict and learned Additional Advocate General for the State, besides, going through the record and we are of the considered view that conviction of accused-convict/Vinod Kumar @ Toni for offence under Section 364-A IPC cannot be sustained though he is liable to be convicted and sentenced for offence under Section 365 IPC.

First of all it needs to be mentioned here that there is overwhelming evidence on the file to show that accused had kidnapped minor child Arshnoor Singh. PW-2 Prabhjot Kaur-complainant, mother of the child had categorically stated so. She identified accused to be the person who was driving the motorcycle at that time, whereas one other person was sitting on his pillion who had kidnapped Arshnoor Singh. She came out of the cross-examination unscathed. She had no reason to depose falsely against the accused-convict. A very important piece of evidence is in the form of deposition of PW-3 Rajiv Sharma who had deposed that on 18.11.2008, Mohit Puri and Vinod Kumar @ Toni, previously known to him had come to his place bringing a child with them stating that since mother of that child was ill and was hospitalized he should keep the child with him for night and on the next day in the morning they took the child back. Subsequently from the photograph and news published in the newspaper he (PW-3 Rajiv Sharma) came to

know that it was that very child who had been kidnapped. In cross-examination, his credibility could not be shaken on any material point. No reason has been alleged or proved prompted by which he might have deposed falsely against accused-convict and in favour of the complainant. Testimony of this witness goes long way in showing that accused had kidnapped Arshnoor Singh minor. Then PW-6 Inderjit Singh categorically stated that on 19.11.2008 at about 1:45 p.m. he had seen Mohit and Vinod coming on a motorcycle and leaving a child in park of Adarsh Nagar. He had seen photograph of that child in the newspaper. Mohit and Vinod Kumar @ Toni were already known to him, so were Gurdip Singh and Balbir Singh. Therefore, statement of this witness also corroborates the prosecution story as regards kidnapping of Arshnoor Singh by accused-convict. Though PW-7 Hans Raj before whom the three accused-convict are said to have made extra judicial confession and regarding their having kidnapped Arshnoor Singh did not support the prosecution story but that by itself does not make much difference since there is otherwise overwhelming evidence available on the record to prove charge against accused-convict. PW-8 Sarabjit Singh who on 18.11.2008 at about 5/5:30 p.m. is said to have heard accused Vinod Kumar @ Toni and another boy to kidnap a child and to remove him on a motorcycle, then would ask for ransom, distributing the money between them, did not support the prosecution story fully and was declared a hostile witness at the instance of learned Public Prosecutor, but then as regards accused-convict his testimony

can certainly be taken to be relevant and incriminating lending support to the prosecution story. Testimony of PW-13 Amarjit Singh also corroborates the prosecution version as regards accused being responsible for kidnapping a minor child. Therefore, as far as offence of kidnapping is concerned, that stands proved on the file but it is not so to the effect that kidnapping was for ransom. The prosecution has been unable to bring home enough positive, cogent and convincing evidence on the file to show that the kidnapping had been done for the purpose of seeking ransom. Coming to statement of PW-2/Prabhjot Kaur-complainant she did not say any word in that regard although in the FIR which was recorded on the basis of her statement she had got it mentioned that after sometime of the incident her father-in-law Sh.Sarbans Singh informed her through telephone that a telephonic call had been received on their shop on telephone No.0181-3293216 from telephone No.97812-50749 that 30 *PETTIES* (₹30 lacs) be arranged and the place where money is required to be delivered would be disclosed in the morning. While getting her statement recorded in the Court as PW-2, Prabhjot Kaur did not make mention of any such thing. Coming to the testimony of PW-4, Sh. Sarbans Singh, father-in-law of complainant Prabhjot Kaur and grandfather of minor child Arshnoor Singh, although he stated that he had received a telephonic call that he should make arrangement for 30 *PETTIES* in case he wanted to get his grandson released and he had received that call at telephone No.0181-3293216 but he was unable to give the telephone / mobile number from which

that call had been made stating that such telephone number was noted down by him and he had disclosed the same to the police. He stated that he had received said telephonic call at about 7:15 p.m. but then there is nothing on record to establish that the call had been made by any of the accused. Although as deposed by PW-10 SI Balbir Singh on 22.11.2008 accused-Vinod Kumar was taken out of the lock up and was interrogated during course of which he disclosed that he had concealed one mobile phone beneath gunny bag on the roof of the house and he could get the same recovered and thereafter in pursuance of that statement got the mobile phone MO-1 recovered but then during the investigation it could not be established that this mobile phone was used for making calls and asking for ransom by PW-4/Sarbans Singh vide which some ransom amount might have been asked for. From the call records brought by PW-9/Sauravdeep Singh such accused-convict could not be connected with any such call said to have been made. Then there is no recording of such conversation between the caller and Sh. Sarbans Singh. It is not case of prosecution that the first call was followed by other call demanding ransom and telling the time and place for delivery of ransom amount. Thus it cannot be inferred that the kidnapping had been done for the purpose of ransom coming within mischief of Section 364-A. There is nothing to say that any threat had been given that in case ransom amount was not given then the kidnapped boy would be done to death or would be injured. Admittedly, no harm had been done to the kidnapped boy, therefore, it

cannot be said that the kidnapping had been done in order to murder coming within definition of Section 364 IPC, rather the offence clearly falls within four corners of Section 365 IPC, i.e. kidnapping with intent secretly and wrongfully to confine person. We are of the considered view that the trial Court clearly fell in error by misappraisal of evidence and wrong interpretation of law while convicting and sentencing the appellant/accused-convict for offence under Section 364-A IPC. Therefore, conviction and sentence of accused-convict/Vinod Kumar @ Toni for such offence is not sustainable.

Resultantly, conviction and sentence of appellant-accused/convict-Vinod Kumar alias Toni for offence under Section 364-A IPC is set aside. Rather he is convicted for offence under Section 365-A of the Indian Penal Code and is sentenced to undergo rigorous imprisonment for seven years and to pay fine of ₹10,000/-, and in default of payment of fine to undergo further rigorous imprisonment for two years. The appeal is accepted to that extent.

Necessary intimation be sent to the quarter concerned.

**23.03.2017**  
Gaurav Sorot

**( T.P.S.MANN )**  
**JUDGE**

**( H.S. MADAAN)**  
**JUDGE**

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|----|------------------------------|-----|
| 1. | Whether reportable?          | Yes |
| 2. | Whether reasoned / speaking? | Yes |