

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 768 of 2017****Reserved on 08.03.2018****Pronounced on 17.04.2018**

(Arising out of judgment/order dated 10.03.2017 in Sessions Trial No.18/2011 of the learned Additional Sessions Judge, Katghora, Dist. Korba)

- Hare Krishna Singh @ Krishna Singh, aged 19 years, son of Gupteshwar Singh, resident of Parascole Koliyari, P.S. Aundaal, district Vardhmaan (W.B.)

---- Appellant**Versus**

- State Of Chhattisgarh, through the Police Station Katghora, District Korba (CG)

---- Respondent**And****CRA No. 967 Of 2012**

- Vijay Bahadur Singh S/o Shri Ram Avatar Singh aged about 60 year, R/o Patkania, P/S Suhwal, distt. Gajipur (U.P.)

---- Appellant**Vs**

- State Of Chhattisgarh Through: SHO Katghora distt. Korba C.G.

---- Respondent

For Appellants	:	Shri Ritesh Verma (Cr.A.No.768/17 & Shri Ajay Mishra (Cr.A.No.967/2012), Advocates.
For Respondent/State	:	Shri Anil Pillai, Dy. A.G. for the State/Respondent

**Hon'ble Shri Pritinker Diwaker &
Hon'ble Shri Sanjay Agrawal, JJ**

CAV Judgment / Order

Per Sanjay Agrawal, J.

1. These appeals have been preferred by the appellants under Section 374 (2) of the Code of Criminal Procedure, 1973, (hereinafter referred to as the Cr.P.C.) against the common judgment dated 10.03.2017 passed by the learned Additional Judge to the Court of Additional Sessions Judge, Katghora in Sessions Trial No. 18/2011 whereby they have been convicted and sentenced as under:

Conviction	Sentence
Under Section 364-A of the Indian Penal Code (for short 'the IPC')	Life imprisonment with fine amount of Rs.5000/- and, in default of payment of fine amount, further Rigorous Imprisonment for 3 months each
Under Section 302 IPC	Life imprisonment with fine amount of Rs.5000/- and, in default of fine amount, further Rigorous Imprisonment for 3 months each.
365 IPC	Seven years Rigorous Imprisonment with fine of Rs.5,000/- and, in default of payment of fine amount. Additional RI for one month each.
201 IPC	Three years Rigorous Imprisonment with fine of Rs.5,000/- and, in default of payment of fine amount. Additional RI for one month each.
Sentences have been directed to run concurrently.	

2. Since both these appeals arise out of the common judgment, therefore, they are being disposed of by this common judgment.
3. Briefly stated, the case of prosecution is that on 24.02.2009 one Jagdish Prasad Mishra went to Korba from Chirmiri for the purpose of servicing of Maruti Zen Estilo Car bearing its registration No.JH-05-U-8837 and when he did not return to home even by 27.02.2009, a

missing report was lodged by his son Rohit Mishra on 27.02.2009 vide Ex.P.5 and that upon investigation owing to the said report, it was revealed that the appellants along with four others have abducted the complainant's father along with his said vehicle and took him to Uttar Pradesh and killed him.

4. Based upon the aforesaid incident, an F.I.R (Ex.P.18) was registered by the concerned Station House Officer on 18.03.2009 against one of the accused persons, namely Ram Vilas Singh under Section 364-A and 365 IPC, after holding an enquiry in pursuance to the alleged missing report (Ex.P.5) purported to have been lodged by the deceased's son Rohit Mishra on 27.02.2009. During the course of the said investigation, it was revealed that Ram Vilas Singh had abducted the complainant's father Jagdish Prasad Mishra and demanded the ransom of Rs.50 lakhs from his son, i.e., the complainant Rohit Mishra on 26/27.02.2009 from his father's mobile phone No.93296-70511. The dead body was recovered on 26.02.2009 from the river Ganges and inquest of the dead body was conducted vide Ex.P.11. The Investigating Officer has recorded the disclosure statement (Ex.P.6) of the appellant Vijay Bahadur Singh, however, nothing was recovered from him.
5. After usual investigation of the matter as such, an offence punishable under Section 364-A, 365, 302 read with Section 34 and 201 IPC was registered against the appellants including the absconded accused persons by the concerned Station House Officer and submitted its report before the Judicial Magistrate First Class, Katghora on 09.10.2009. The matter was thereafter committed to the Sessions Judge, Korba for its trial on 14.02.2011.

6. After considering the prima facie materials available on record, charges under Section 364-A, 365, 302 read with Section 34 and Section 201 IPC have been registered against the appellants, who have pleaded not guilty in connection with the aforesaid crime, as framed, and claimed to tried.
7. The prosecution, in order to bring home the guilt of the appellants/accused persons, has examined as many as 21 witnesses, while none was examined by the appellants in their defence.
8. After considering the evidence led by the prosecution, the trial Court, vide its impugned judgment, has convicted the appellants and sentenced them in relation to the crime in question.
9. Being aggrieved, the appellants have preferred these appeals. Shri Ajay Mishra and Shri Ritesh Verma, learned counsel for the respective appellants submit that the judgment under appeal as passed by the trial Court is perverse and illegal, inasmuch as, it did not appreciate the evidence in its proper perspective. They submit further that in absence of any cogent and reliable evidence coupled with the evidence as to demand of ransom amount, as alleged, the trial Court ought not to have convicted the appellants as such. They, therefore, submit that the judgment impugned be set aside and instead the appellants be acquitted of the aforesaid charges.
10. On the other hand, Shri Anil Pillai, learned Deputy Advocate General for the State has supported the impugned judgment by submitting, inter alia, that it has been passed upon due and proper appreciation of the evidence, and therefore, does not require to be interfered.

11. We have heard learned counsel for the parties and perused the entire record carefully.
12. Rohit Mishra (P.W.6) is the son of the deceased Jagdish Prasad Mishra and has stated in his evidence that his father had gone to Korba on 24.02.2009 by Maruti Zen Estilo Car bearing its registration No. JH-05-U-8837 for the purpose of servicing the Car but did not return though he was seen in the evening at Katghora. He has stated further that they even could not contact him next day, i.e., 25.02.2009. He has stated further that they have tried to lodge the missing report at Korba but the same was refused by informing him that the report could be lodged there itself since his father lives in Chirmiri. According to his further statement, when they were returning to Chirmiri, his brother Rahul Mishra, on the way, had contacted his father on his Mobile phone but someone else has lifted the phone and demanded ransom amount of Rs.50 lakhs. He has stated further that the conversation so made in this regard was recorded and submitted before the concerned Police and returned to Korba again where they lodged the missing report vide Ex.P.5 on 27.02.2009.
13. According to his (P.W.6) further statement, they came to know on 28.02.2009 about their father's mobile location to be at Revtipur Patkani region of Uttar Pradesh and, came to know further that a similar matter related to abduction of some other person is under investigation against the appellant Vijay Bhadur Singh as soon as they reached the Gajipur Police Station where his son was detained for interrogation. It has been stated further by him that upon queries being made to his son by showing him the photographs of the said

Maruti Zen Car, then he replied that the said Car was in the possession of his father Vijay Bahadur and one Ram Vilas, the absconded accused person and informed that they had gone to attend the wedding ceremony.

14. This witness (P.W.6) has stated further in his evidence that he received a phone call from the abductors directing him to come with ransom amount of Rs.5 lakhs when he was at Mugalsarai and according to their further instructions he reached the school situated at Kajora along with the amount of Rs.5 lakhs in a bag, which was taken by the appellant Krishna Singh and thereafter they went away. He has put forth further that next day, when he did not receive any phone call from his brother, then he went to the Police Station for furnishing information where he had seen the same bag, by which, the appellant Krishna Singh had taken the said amount of Rs.5 lakhs from him. He has stated further that he came to know from the Police authorities that one person was killed behind the school, who was identified by him to be his brother and, in the meantime, he was directed to come to the Police Station Mohmadabad, District Gajipur to identify a dead body recovered from the river Ganges and was burnt to ashes declaring the same to be unclaimed dead body and upon showing the photographs of the dead body by the Police, it was identified by him to be his father Jagdish Prasad Mishra.
15. According to his further statement, he received the telephonic information from the Police Station Andal (District Durgapur) that they have arrested the accused persons and upon reaching the Police Station he identified the appellant Krishna Singh as the person who had taken the alleged ransom amount from him.

16. Premlata Mishra (P.W.7) is the wife of deceased Jagdish Prasad Mishra and has stated in her evidence that her husband had gone to Korba by Maruti Zen Car on 24.02.2009. Vijay Shankar Mishra (P.W.8) and Abhishek Kumar Singh (P.W.9) have turned hostile without supporting the prosecution case while Awadhesh Singh (P.W.10) and Ashok Kumar (P.W.11) are formal witnesses. Surendra Singh (P.W.12) has stated in his evidence that he knew the appellant Vijay Bahadur Singh, who informed him that he had taken the sum of Rs.5 lakhs from the son of priest and killed the priest. Nothing has been elicited from his evidence as he has not supported the prosecution case.
17. Asif Khan (P.W.13) is the witness of inquest (Ex.P.11) but has not supported the prosecution case. Shyam Sunder (P.W.14) and Ram Nagina Singh (P.W.19) have also turned hostile as they did not support the prosecution case. Sahayal Singh (P.W.15) is a Constable and remained as formal witness. K.R. Sahu (P.W.16) is the Investigating Officer and has supported the prosecution case. Mukti Turkey (P.W.17) is the S.D.O.P. Koria, under whose direction, the Investigating Officer K.R.Sahu (P.W.16) has conducted the investigation. S.R.Dhritlahre (P.W.18), Lalji Shukla (P.W.20) and Ranjit Ram (P.W.21) also took part in investigating the matter. Rajesh Kumar Singh (P.W.1) is the formal witness and has not supported the prosecution case. Brij Kishore Sharma (P.W.2), Dadan Singh (P.W.3), Mohan Kumar (P.W.4) and Avinash Pandey (P.W.5) have turned hostile without supporting the prosecution story.
18. Perusal of the aforesaid evidence would show that there is no direct evidence with regard to abduction and the murder of the

complainant's father Jagdish Prasad Mishra and, the case is completely based upon the circumstantial evidence. In a catena of cases such as “***Shanti Devi v. State of Rajasthan***”, “***Hanumant Govind Nargundkar v. State of M.P.***” and “***Sharad Birdhichand Sarda v. State of Maharashtra***” reported respectively in (2012) 12 SCC 158, 1952 SCR 1091 and (1984) 4 SCC 116, the Hon'ble Supreme Court has laid down certain principles to be followed in cases of circumstantial evidence, which are as under:-

- (1) The circumstances from which an inference of guilt is sought to be proved must be cogently or firmly established.
- (2) The circumstances should of a definite tendency unerringly pointing towards the guilt of the accused.
- (3) The circumstances taken cumulatively must form a chain so complete that there is no escape from the conclusion that within all human probability, the crime was committed by the accused and none else.
- (4) The circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

19. Reverting back to the case in hand where it emerges from a bare perusal of the aforesaid statements that the complainant Rohit Mishra's father Jagdish Prasad Mishra had gone to Korba from Chirmiri on 24.02.2009 for the purpose of servicing his Maruti Zen Estilo Car bearing its registration No. JH-05-U-8837 but did not return even by the evening of the same day. A written missing report (Ex.P.5) was, therefore, lodged by his son Rohit Mishra on 27.02.2009 at Police Station Kotwali, Korba and that upon enquiry being made owing to the alleged report, it was revealed that the

complainant's father had been abducted by the appellants with the help of other absconding accused persons along with the said vehicle, i.e., Maruti Zen Estilo Car. However, the evidence adduced by the prosecution, vis-a-vis, the missing report (Ex.P.5) and the first information report (Ex.P.18) registered on the strength of the said missing report would show that none of the appellants have ever demanded the alleged ransom amount from the complainant else the demand of alleged ransom amount must have been mentioned in the said written missing report (Ex.P.5) lodged by the deceased's son Rohit Mishra. Non-mentioning of the same would, therefore, create a doubt regarding the authenticity of the prosecution story. What is reflected further from bare perusal of the complainant's statement is that he has seen the very same bag in the Police Station, by which, the ransom amount of Rs.5 lakhs was taken from him by the appellant Krishna Singh, however, the same has not been corroborated by any of the prosecution witnesses.

20. Moreover, his (complainant's) further statement, as stated in para – 3, would show that when he was returning from Korba, he contacted his father from his Mobile phone but the abductor has picked up the Mobile phone and demanded the ransom amount of Rs.50 lakhs for the release of his father and the conversation so made in this regard was not only recorded but was handed over to the Police Authorities also. However, no such recording was placed on record by the prosecution for the reasons best known to it. Besides, nothing was recovered including the alleged Maruti Zen Estilo Car from any of the appellants and even on the basis of the disclosure statement (Ex.P.6) of the appellant Vijay Bahadur. In essence, what we have gathered,

under the facts and circumstances of the case, is that the communication demanding alleged ransom amount, the material link itself, was completely missing in this case. In such an eventuality and that by applying the principles laid down in the above mentioned case laws, it cannot be held that the appellants are involved in any manner in the commission of alleged crime. The Court below has not weighed the evidence in the proper perspective while arriving at the conclusion of guilt of the accused/appellants, therefore, the findings recorded by the Court below do not deserve affirmation.

21. Consequently, both these appeals are allowed and the conviction of the appellants under Sections 364-A, 365, 302 and 201 IPC and the sentence awarded thereunder vide judgment dated 10.03.2017 in Sessions Trial No.18/2011 are hereby set aside. The appellants are hereby acquitted of the aforesaid charges. They shall be set at liberty forthwith, if not required in any other case.

Sd/-
(Pritinker Diwaker)
JUDGE

Sd/-
(Sanjay Agrawal)
JUDGE