

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 62 of 2012**

- Mahesh Banjare S/o Shri Ghope Singh Banjara, aged about 24 years R/o Udaypur Sadhawad (pipal wala) Mochla thana, Gandhari, District – Aligarh (U.P.

---- Appellant**Versus**

- State Of Chhattisgarh Through Police Station – Bodhghat, District – Bastar, Jagdalpur (CG)

---- Respondent

For Appellant : Shri Kunal Das, Advocate
 For State : Ms. Tripti Rao, Panel Lawyer

Hon'ble Shri Justice Manindra Mohan Shrivastava**Hon'ble Shri Justice Gautam Chourdiya****Order On Board****Per Manindra Mohan Shrivastava, J.****22/11/2018**

This appeal is directed against impugned judgment of conviction and order of sentence dated 24/04/2010 passed by the Sessions Judge, Bastar at Jagdalpur (CG) in Sessions Trial No.104/09 whereby and whereunder the appellant has been held guilty of commission of offence as described below -

	<u>Conviction</u>	<u>Sentence</u>
1	U/s 363 of IPC	Rigorous imprisonment for seven years with fine of Rs.500/- (in default of payment of fine, additional R.I. of 1 month)
2	U/s 364 of IPC	Life imprisonment with fine of Rs.500/- (in default of payment of fine, additional R.I. of 1 month)
Both the sentences to run concurrently		

2. According to the prosecution story, a written report (Ex.P/1) was given by Kalvinder Singh (PW1) in police station – Bodhghat regarding kidnap of his minor son – Aman, for ransom by his employee, the truck driver – Mahesh Banjara (the appellant). On the basis of the said written report, FIR (Ex.P/2) was also registered on alleged commission of offence under Section 363, 364 -A/ 34 of IPC against the appellant and alleged persons involved in the commission of offence. The father of the child received phone calls on which, he was required to give Rs.50,000/- otherwise, his son would be killed. The telephone call details were traced and it is the case of the prosecution that the appellant – Mahesh Banjara had given a call from a place called Malkhangiri (Orissa) to Kalvinder Singh (PW1), the father of the abducted child. The police machinery and the relatives became active and it is said that from Bus Stand of Village - Kottameta (Orissa), the appellant was taken into custody and the child was recovered from his clutches. The appellant was prosecuted for the alleged commission of offence.

3. On the basis of material contained in the charge sheet, learned Trial Court framed charges against the appellant for alleged commission of offence under Section 363 and Section 364-A of IPC and it was alleged that the appellant had kidnapped a minor child for ransom and threat was also administered to the father of the child that if Rs.50,000/- is not paid, child would be murdered. The appellant having abjured guilt was put to trial.

4. In order to prove its case, the prosecution examined as many as 9 witnesses. The appellant was, thereafter, examined under Section 313 CrPC in respect of incriminating circumstances and evidence appearing against him in the evidence led by the prosecution. While denying all the incriminating circumstances, the appellant came out with the defence that while working as Conductor of the vehicle, he was called by Golu and he had gone along with him on the motor cycle and thereafter, they came back to the bus stand. Golu left in the bus stand and brought Rs.1,000/- from his brother-in-law – Kale. He does not know anything about the incident and it is Golu and Kalu, who are

the main culprits of the incident.

5. Learned Trial Court, however, relied upon the prosecution evidence holding the appellant guilty of commission of offence and imposing sentence of life imprisonment, giving rise to this appeal.

6. Assailing correctness and validity of impugned judgment of conviction and order of sentence, learned counsel for the appellant argued extensively and submitted that the prosecution has failed to prove, beyond reasonable doubt, that allegedly, the kidnapped child – Aman was recovered from appellant's possession. He would argue that the entire case of the prosecution against the appellant is based only on suspicion because at the relevant time, the appellant was employed as a Conductor under Kalvinder Singh (PW1) – father of the child. He would further submit that there is no clinching evidence that the appellant had taken the child away from his house or he was seen moving with the child at another place. The evidence of Kalvinder Singh (PW1) is based only on suspicion that the child was missing, might have gone along with the appellant because ordinarily, the appellant used to take the child for a round. It is also argued that the prosecution witnesses, who have been examined, have failed to clearly state which exactly was the spot wherefrom the child was recovered while in the alleged illegal custody of the appellant. The recovery panchanama (Ex.P/4) records place of recovery as police station which is contrary to the prosecution case of the appellant having been found along with the child in the bus stand of Village – Kottameta in Malkhangiri. Even according to the prosecution evidence, it is argued, when they reached the police station, the appellant was sitting in the police station and the child was kept for proper care in somebody else's house. Therefore, in the absence of there being any evidence of child being either seen in the custody of the present appellant or recovered from his custody, the entire case of the prosecution becomes highly doubtful and benefit of doubt must go to the appellant.

7. Per contra, learned counsel for the State would argue that the clinching evidence on record proved by the prosecution are that the appellant was employed and working as Conductor with Kalvinder Singh (PW1), transport owner, who is the father of the child. He has clearly deposed regarding child taken away and not returned and having eloped. The prosecution evidence has proved that both the child and the appellant were found in Malkhangiri, the place wherefrom the telephone call was received from Sim No.94076-16376. Kalvinder Singh (PW1) has deposed that it is the appellant who had called from his number and on the basis of the location of the mobile, the appellant was traced and arrested from Malkhangiri only where the child was also found. The appellant has failed to explain how he reached Malkhangiri and where he left the child after he had taken the child from his house. Therefore, all the proved circumstances point only towards the guilt of the appellant. Learned State counsel would further argue that in the evidence, Kalvinder Singh (PW1) has clearly stated that threat was given that if Rs.50,000/- is not given, the child would be murdered. Therefore, all the ingredients of commission of offence under Section 363 and 364-A of IPC are proved beyond reasonable doubt.

8. Before examining the evidence brought on record by the prosecution, it would be relevant to examine as to what are essential ingredients of commission of offence under Section 364-A of IPC which provides for death sentence or life imprisonment and is considered to be a heinous crime. Section 364-A IPC is extracted herein below -

“Kidnapping for ransom, etc. - 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 organisation 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].”

9. In order to make out a case of commission of offence under Section 364-A of IPC, the prosecution is not only required to prove kidnapping or abduction or keeping a person in detention after such kidnapping or abduction but also to prove threat to cause death or hurt to such person or the conduct which may give rise to reasonable apprehension that such person may be put to death or hurt or such kidnapping or abduction with or without detention is followed by hurt or death actually caused to the person kidnapped or abducted and further that such criminal overt act is done in order to compel a person to do or abstain from doing any act or to pay a ransom. If such ingredients are proved by the prosecution, then only it can be said that the person is guilty of commission of offence under Section 364-A of IPC. We shall now examine the material on record to find out whether the prosecution has succeeded in proving the alleged commission of offence beyond reasonable doubt so as to warrant conviction under the said provision and imposition of life imprisonment.

10. Kalvinder Singh (PW1), the father of the child has deposed that on 29/04/09, while the appellant was working as Conductor under his employment, he often used to take his son-Aman for a round in the city. He deposed that when at about 4:30 to 5 PM on 25/04/2009, he had gone in connection with his work and returned home by 7:30 PM, he was informed by his wife and other family members that Mahesh Banjara- the appellant had gone along with Aman, the child and has not returned. Thereafter, relatives were informed and attempt was made to find out the child. Finally, when the child could not be traced, report was lodged in the police station – Bodhghat at about 8:30 - 9 PM. He has proved his written report (Ex.P/1) stating that it was signed by him. He has further deposed that after he came out from the police station, he received a phone call in which the name was not disclosed but he was informed that his son was kidnapped and if he wants to take back the safe custody of his child, then he should leave Rs.50,000/- at the indicated place. He was also warned not to report the matter to the police. This witness further deposed that he was very specifically warned that if the

matter is reported to the police, the child would not be returned and would be murdered. On the advice of the police officer, when he redialled the number, he was asked not to go in hurry and he would be informed where to deliver the money. He then states that on the next day, another call on mobile was received by him. This call was made by Mahesh Banjara, the appellant, who informed him that he is in Beejapur and some persons came from Uttar Pradesh, because of enmity, have kidnapped the child and have asked to give Rs.50,000/-, then only the child would be released. He further deposed that the police, on the basis of mobile call proved that the call was made from Malkhangiri and then relatives residing therein were informed and before he could start, information was received that the child was recovered from the custody of the appellant and he came to know that his son was kept in the illegal detention by the present appellant at a place, two kilometers away from Malkhangiri. This witness has been subjected to cross examination in which he has admitted suggestion that the appellant was working as Helper under his employment and very often, he used to take his child for a round in the city and every time, he used to come back. He has further informed in the cross examination that second call was given by the present appellant stating that people from Uttar Pradesh have abducted his child and demanded Rs.50,000/-.

The witness does not state that from whose custody, child was recovered. The other prosecution witness – Sukhdev Singh (PW2) states that he was informed by Kalvinder that his child was kidnapped and also that a mobile call is being made from a place called Malkhangiri and the present appellant was traced from some place near Malkhangiri and finally he was caught by a relative in Malkhangiri, brought to police station and child was taken by the police people and kept in a house of local inhabitant. This witness admits that when he reached Malkhangiri, the child was brought to the police station from the house adjacent to Malkhangiri Police Station.

11. Harpinder Singh (PW3) has deposed that he had left for Malkhangiri upon receiving the information and in the police station – Malkhangiri, it was informed that the

child was administered intoxicated drug and therefore, he was, for the time being, kept in the adjacent house wherefrom, the child was taken by the police people and it was informed that the child was found standing in the Bus Stand of village near Malkhangiri and from that place, he was recovered. He states that recovery panchanama was prepared upon recovery of the child from the custody of the present appellant and he has proved his signature.

In the cross examination, he has admitted that upon reaching Malkhangiri, he came to know that the child was recovered and kept in one of the house of community and he does not know as to who kidnapped the child.

12. One of the police officer D.K.Markandey (PW7) posted in City Kotwali, Jagdalpur has deposed that he had recovered child Aman from Village – Kottameta, Police Station – Malkhangiri from the present appellant – Mahesh Banjara in the presence of the witnesses and has proved preparation of recovery panchanama (Ex.P/4). In his cross examination, he admits that the kidnapped child was recovered from Kottameta Bus Station, but he denies suggestion that when child was recovered, no witness was present.

13. From the evidence of these witnesses, what is borne out is that the appellant was working under the employment of Kalvinder Singh (PW1) and he had taken away the child for ransom on 29/04/2009 and thereafter, he along with the child eloped and was not traceable and finally child could not be traced, at about 8:30 PM, Kalvinder Singh (PW1) lodged report in the police station. A perusal of written report (Ex.P/1) lodged by Kalvinder Singh (PW1) and FIR on that basis would corroborate the evidence of Kalvinder Singh (PW1) in this regard that the child was removed from his custody by the present appellant and thereafter, the child was not traceable nor the present appellant was found. This fact has been clearly stated in the written report and FIR both which was lodged promptly and instantaneously after child had gone missing.

The fact that the present appellant was found at Malkhangiri and further that the child was also recovered from Malkhangiri, is also not in dispute, which is proved from the aforesaid prosecution witnesses i.e. Kalvinder Singh (PW1), Sukhdev Singh (PW2), Harpinder Singh (PW3) as also D.K.Markendey (PW7).

14. Serious doubt, however, has been created on the basis of submission that there is no clinching evidence to prove that the child was recovered from the custody of the present appellant. Learned counsel for the appellant highlighted that none of the prosecution witnesses say that when the police or any private person, including the relatives of Kalvinder Singh (PW1) traced the appellant at some place, the child was found along with him and what has been stated in Baraamadgi Panchanama (recovery panchanama) [Ex.P/4] shows that the child was recovered in the police station whereas the prosecution evidence has been that the child was recovered from the Bus Stand of Village – Kottameta (Malkhangiri).

Baramadgi Panchanama has been proved from the evidence of D.K.Markendey (PW7), the police officer who has clearly stated regarding recovery of the child from the Bus Stand. In his examination-in-chief, he states that the child was recovered in the presence of witnesses. If we look into the said recovery panchanama (Ex.P/4), it contains recital that on 30/04/2009, the kidnapped child – Amanpreet was recovered from the custody of the appellant in the bus stand of Kottameta village.

15. The evidence of recovery of child from the custody of present appellant is proved from the evidence of D.K.Markendey (PW7), Harpinder Singh (PW3) corroborated from the evidence of Kalvinder Singh (PW1) and Sukhdev Singh (PW2) both.

16. The evidence of Kalvinder Singh (PW1) that the appellant was in his employment, has not been controverted. Rather, suggestion has been given to this witness which was admitted that the appellant, while under his employment, often used to take his son

for a round in the city, though he suggests that he used to come back with the child. Further, the evidence that on the fateful day, the appellant had taken the child along with him has also not been controverted and therefore, it is proved from the prosecution evidence beyond doubt that the appellant was under the employment of Kalvinder Singh (PW1), father of the child. He used to take the child for a round very often and on the fateful night, it is the appellant who had taken the child. The appellant, however, has failed to explain such incriminating circumstances in his examination under Section 313 CrPC as to when he along with the child came back to the house and handed over the child to his guardian or any other member of the family. The prosecution evidence which goes unrebutted is that the child was recovered at Malkhangiri. This reliable evidence fill in the gap, if any, in the prosecution case to remove any iota of doubt with regard to recovery of child from the custody of present appellant at Malkhangiri. In the written report, mobile with Sim No.94076-16376 has been stated to be used by the present appellant to give a call to Kalvinder Singh (PW1) regarding his child having been kidnapped. Kalvinder Singh (PW1) has deposed in his evidence that second call received by him was given by the present appellant.

17. Harvinder Singh (PW9), who is the brother-in-law of Kalvinder Singh (PW1) has deposed that by mistake, he had picked up another person's mobile of Mr. Gajendra Sharma (PW4) and sim used therein was taken out and it was given to Mahesh Banjara, the appellant. This fact has been stated by Harvinder Singh (PW9) in para 3 of his evidence. A suggestion has been given to him which he denied that the sim card which was taken out from the mobile of Gajendra Sharma (PW4) was used by his son – Golu. This provides an additional link to the circumstances which point towards the guilt of the present appellant as according to the evidence of Kalvinder Singh (PW1), it is this sim number, which was used to give a call to Kalvinder Singh (PW1) and the evidence of Kalvinder Singh (PW1) that this call was given by the present appellant – Mahesh Banjara is corroborated from the said evidence of Harvinder Singh (PW9) that the sim

card was given by him to the present appellant.

18. The evidence of the prosecution witness shows that not only the child was kidnapped and kept in detention but also he was kidnapped for ransom. It has come in the evidence of Kalvinder Singh (PW1) that a demand of Rs.50,000/- was made from him. Third ingredient of threat or hurt or death has also been proved in the prosecution evidence that a threat was held out that the child would be killed. This prosecution evidence could not be impeached by the defence either by any defence evidence or in the explanation of the accused under Section 313 CrPC.

19. In view of above consideration, an inescapable conclusion is that it is the appellant, had kidnapped the child for ransom by raising demand of Rs.50,000/- and threat of murder of child was also held out. The minimum sentence being life imprisonment, we find ourselves unable to interfere with the conviction or the sentence part. The impugned judgment of conviction and sentence is hereby affirmed. This appeal fails and is accordingly dismissed.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Sd/-

(Gautam Chourdiya)
Judge