

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 812 of 2016**

1. Raja @ Jai Sharma, S/o Late Shri Jai Prakash Sharma, Aged About 20 Years R/o Newmanichack, P.S. Masudi, Distt. Patna Bihar
2. Ashwani Kumar Sah S/o Sat Narayan Aged About 22 Years R/o Bompas Town Basera Kothi Chandi Bhawani Road, Devghar, P.S. Devghar, Distt. Devghar Jharkhand

---- Appellants**Versus**

State Of Chhattisgarh Through Police Station Civil Lines, Bilaspur, Distt.
Bilaspur Chhattisgarh

....Respondent

For Appellants	:	Mr. Awadh Tripathi, Advocate
For State	:	Mr. Anil Pillai, Dy. A.G.

DB : Hon'ble Shri Justice Manindra Mohan Shrivastava**Hon'ble Smt. Justice Rajani Dubey****Judgment On Board by Manindra Mohan Shrivastava, J.****13.12.2018**

Heard.

1. This appeal is directed against impugned judgment of conviction and order of sentence dated 02.06.2016 passed by IXth Additional Sessions Judge, Bilaspur (CG) in Sessions Trial No.129/2015, whereby and whereunder, the appellants have been held guilty of commission of offence and sentenced as described below:

Conviction	Sentence
Under Section 364-A of IPC	Imprisonment for life and fine of Rs.1000/-, in default of which, additional R.I. for 1 month.
Under Section 120-B of IPC	Life imprisonment and fine of Rs.1000/- in default of payment of fine amount six months further R.I.
Under Section 323/34 of IPC	R.I. for two months and fine of Rs.100/- in default of payment of fine amount ten

	days further R.I.
Under Section 506/34 of IPC	R.I. for six months and fine of Rs.200/- in default of payment of fine amount 15 days further R.I. All the sentences shall be run concurrently.

2. The prosecution story, as unfolded from the impugned judgment and records of the case, is that Daneshwar Sahu (PW1) was given a phone call by one Rohit from Patna with regard to purchase of machine manufactured by Daneshwar Sahu in his manufacturing Unit known as 'Megha Engineering Firm Bharani Parsada which is engaged in manufacture of Fly Ash Bricks Machine. When Daneshwar Sahu went to Patna, he was taken to a particular place and there, he was kept in confinement and detained, wherein, he was tied up, threatened and was asked to call his family members to pay ransom of Rs.10 lacs. Further case of the prosecution is that Daneshwar Sahu, in the captivity of the appellants and the other accused Rohit (juvenile) called his relation to bring the money whereafter his relations collected money, went to Patna and Rs.10 lacs were collected by co-accused Rohit and thereafter, Daneshwar Sahu was released from captivity. Further case of the prosecution is that initially the complainant Daneshwar Sahu had gone to Mungeli, Police Station on 28.06.2015 but according to the police, it was a case pertaining to territorial jurisdiction of another police station, Civil Lines, Bilaspur, the case was transferred and there an FIR was registered on 07.07.2015, which recorded that Daneshwar Sahu, upon call, had gone to Patna where he was abducted, kept in wrongful confinement, ransom demanded and upon payment of ransom by relatives, he was released. The accused were arrested and further case of the prosecution is that Test Identification Parade was conducted on 07.01.2015, in which, victim Daneshwar Sahu (PW1) identified them. Some cash amount was recovered from co-accused Rohit. Rohit being juvenile was sent to Juvenile Board for enquiry. The appellants were tried for commission of offences of kidnapping for ransom. The prosecution came out mainly with the evidence of victim, himself, who stated regarding kidnapping and demand of ransom. Learned Trial Court mainly relying upon the evidence of this witness, held the appellants guilty of commission of offence and sentenced as described above.

3. Learned counsel for the appellants argued in extenso and submitted that the entire case of the prosecution is shrouded in mystery and embedded in dubious circumstances which make it extremely doubtful in so far as involvement of the present two appellants are concerned. He would argue that in the present case, FIR has been taken after 30 days even after return of the victim from Patna. He would submit that the victim neither lodged any report at Patna nor at any other place until he reached Bilaspur on 23.06.2015. The FIR in Police Station, Civil Lines was lodged only on 07.07.2015 which renders the prosecution case doubtful. The next submission is that according to prosecution witness, the victim Daneshwar Sahu had gone to Police Station Mungeli on 28.06.2015 but there, he only complained of marpeet without there being any specific allegation of he being abducted, kept in captivity on demand of ransom. Learned counsel for the appellants further argue that even according to the prosecution evidence, a call was given to Daneshwar Sahu by co-accused Rohit and the ransom was also collected by him at Patna. Moreover, though memorandum of Rohit was taken, the prosecution has failed to prove that the money which is alleged to have been given to the share of these two appellants was either kept by the appellants with them or deposited in some bank account or given to any of their family member or found in their bank accounts. This further renders the prosecution story highly doubtful with regard to the involvement of these two appellants in the alleged act of kidnapping for ransom.

4. On the aspect of identification, learned counsel for the appellants argues that the identification is highly doubtful because firstly, the Executive Magistrate and the witnesses of identification have not been examined by the prosecution and secondly, another witness of memorandum and seizure Srikant Soni (PW3) in his cross-examination had admitted that when he had gone to Police Station, Daneshwar Sahu (PW1), the victim was also with him and they had seen the accused, therefore, the dock identification of the accused becomes highly doubtful and cannot be acted upon. He would further argue that a suggestion has been given to Daneshwar Sahu (PW1) that there was a false case made out by Daneshwar Sahu (PW1) because of internal dispute with the other partners of the manufacturing firm.

5. Learned counsel for the appellants would also argue that the evidence brought by the prosecution with regard to collection of Rs.10 lacs for being paid to accused is also doubtful because the victim, who has stated regarding collection of

money, has not brought before the Court, any documentary evidence with regard to withdrawal of money from the bank account stated in their oral testimony.

6. Learned counsel for the appellants further argue that present is not a case where there was any threat of hurt to the victim or hurt actually caused to the victim or that the appellants conducted in a manner which gave rise to reasonable apprehension in the mind of the victim that he may be put to death or hurt. Therefore, according to him, one of the essential ingredient of commission of offence under Section 364-A of IPC is missing and at the most, present would be treated only to be a case of commission of offence under Section 347 or 365 of IPC. In support of submission, learned counsel for the appellants has been placed reliance upon the judgment in the cases of **Anil Singh Chandel Vs. State of Chhattisgarh [(2016) CriLJ 2835]**, judgment dated 16.11.2018 passed in Criminal Appeal No.618 of 2002, **Parvez Khan and others Vs. State of Chhattisgarh**, in the case of **Sri Rajesh Gadodia Vs. State of Orissa [(2016) CriLJ 3755]** and judgment dated 07.03.2006 of Madhya Pradesh High Court in the case of **Durga Shankar Alias Durgalal and Ors Vs. State of Madhya Pradesh [2006 CRLJ 2494]**.

7. On the other hand, learned State counsel would argue that in the present case, the victim has clearly deposed in his evidence regarding the criminal overt act of the two appellants that he remained in their captivity for two days confined in a house and his hands were tied up and he was administered threat by knife and then a demand of ransom was made. He was made to call his relations who brought Rs.10 lacs paid to Rohit and then only, the victim was released. He would argue that present is a case of criminal conspiracy and the very act of the appellants in keeping the victim in confinement and compelling him to make a demand for ransom proves their involvement in the conspiracy of which Rohit was other member, who may have given a call and collected the money. He would next submit that present is not a case where the victim had no occasion to see the appellants in a flash of moment that it was difficult for anyone to clearly identify anyone so as to require corroboration of dock identification from Test Identification Parade. He would submit that even though, Executive Magistrate and witnesses have not been examined, the victim, himself, has very clearly stated regarding Test Identification Parade, in which, he identified. He would submit that the circumstances of the case that the victim remained in captivity for two days clearly shows that the victim had ample opportunity to recognise identify the appellants

and in the dock identification, he has remained very firm on the identification. He would further submit that the appellants are not local residents but resident of a place in another state and they are not known to the victim and there is no reason why the victim would falsely implicate them rather than implicating those, who had actually kept him in captivity. Learned State counsel would further argue that each and every ingredient of commission of offence under Section 364-A of IPC has been proved by the prosecution which included abduction keeping the victim in detention, administering threat by wielding knife, compelling him to call for ransom. He would argue that the case of wrongful confinement or abducting with intend secretly and to wrongfully confine a person have different ingredient of offence but it would roll into commission of offence under Section 364-A of IPC if the purpose of abduction or kidnapping is to call for ransom and from the conduct of the accused, reasonable apprehension may come in the mind of the victim that he may be put to death or hurt. He would argue that all these ingredients have been fully proved in the present case, therefore, conviction does not warrant any interference.

8. We have heard learned counsel for the parties and perused the records.

9. Daneshwar Sahu (PW1), the victim, has deposed that he received call on 14.06.2015 at 10:45 hours in the morning from a mobile number, on which, the caller disclosed his name as Rohit and stated that he was desirous of purchase of machines and he called victim Daneshwar Sahu (PW1) for further negotiation at Patna. The victim further deposes that he went to Patna on 21.06.2015 by train, reached thereon 22.06.2015 and then he lodged himself in a hotel and then he was collected from that hotel by another person and taken in vehicle to another house which was about 5 to 6 km. away. In the house, he found there two persons already present and he has identified present appellants as those two persons who were found in the house. He has also stated that out of them, one had taken him from station and the another was already present. He further deposes that when he reached that house, doors were locked from inside and the two appellants and the third one, tied his face, mouth with the help of rope and then he started showing him knife and intimidating him. On he being asked, the accused demanded ransom and asked him to write. He was then asked to state how much amount, he could arrange. They demanded Rs.30 lacs but when victim expressed his inability, after sometime, the accused stated that Rs.10 lacs will have to be paid. This witness has further deposed that he was made to call his uncle, upon

which, call was made and he asked his uncle to come to Patna along with Rs.10 lacs and thereafter his brother Bhupendra and Sandeep were given Rs.10 lacs and they left for Patna. He further stated that he attempted to escape but could not succeed. He also stated that the appellants also assaulted and he was tied with ropes and there was teeth bite also. In this manner, he was kept in confinement, later on, after his brother reached and met Rohit, handed over Rs.10 lacs. When Ashwani and Raja @ Jai Sharma (appellants herein) received information from Rohit that money had been collected, the appellants had asked him to remove all the clothes and then he was given clothes and finally asked to move ahead. He states that on 23.06.2015, he left for Bilaspur and reached Bilaspur on 24.06.2015 went to his family at Mungeli. He was given a threat that if incident is disclosed, they would be killed and they have their person all around and finally with the advice of the family member, a report was given in Civil Lines, Police Station on 07.07.2015, on which, FIR (Ex.P/1) was recorded, signed by him and has proved his signature.

10. D. Banjare (PW5), Inspector, who at the time was posted in City Kotwali, Mungeli stated that on 28.06.2015, Daneshwar Sahu (PW1) had come in the Police Station and gave a complaint in writing that on 22.06.2015, he was assaulted by third person after tying up his limbs and has sustained injury on his chest, ribs, face and neck and he was sent for medical examination vide application Ex.P/10. In cross-examination, he stated that as the complaint related to a place which was within the territorial jurisdiction of Police Station, Bilaspur, the matter was referred to the Superintendent of Police and Inspector General for further action and he admits that in the memo written by him, the name of the appellants has not been mentioned.

11. The evidence of Daneshwar Sahu (PW1) and D. Banjare (PW5) proves that the victim had returned to Bilaspur on 24.06.2015 and as he was resident of Mungeli, he went to his home place Mungeli which is another town. He went to Mungeli to meet his family members and he has further stated that he was scared because of incident which happened with him and he was also given threat that if he discloses, he would be murdered as the accused persons have their associates all around and ultimately on 28.06.2018, after seeking advise of family members, the matter was reported to the police Station Mungeli. D. Banjare (PW5), Inspector at Mungeli states that as the incident related to area within territorial jurisdiction of City Kotwali, Bilaspur, the case was forwarded and finally FIR was registered in

Police Station, City Kotwali, Bilaspur on 07.07.2015. This explains how there was some delay in lodging FIR. Initially, delay in lodging FIR was because of threat and that the victim was scared from 28.06.2015 till 07.07.2015, the delay appears to have been caused because according to Police Station Mungeli, it was a case of Bilaspur and therefore, the case was forwarded for further action to the Superintendent of Police and Inspector General of the area. Therefore, we do not consider it to be a circumstance to doubt the prosecution case and the allegation of victim Daneshwar Sahu (PW1) regarding commission of offence.

12. Learned counsel for the appellants argued that at Police Station Mungeli, no specific detail of kidnapping was given but only allegation of marpeet was informed, therefore, the prosecution story becomes doubtful. He would also submit that written complaint was also not filed before the Court. We think that, by itself, would not render prosecution story doubtful because the victim has clearly stated that report of the victim had been tied up and assault was made and no further investigation was carried out and the case was forwarded to another police station where on the first instance, FIR has been recorded on 07.07.2015 at the instance of Daneshwar Sahu (PW1).

13. The evidence of Daneshwar Sahu (PW1) on the aspect of he being abducted and then kept in captivity as also threatened and demand of ransom has remained firm. He has emphatically deposed that he was called at Patna and then he was kept in the captivity for about 2 days and he has clearly stated that there he was tied up and all the accused, on the point of knife, intimidated/threatened him. He has further deposed very firmly that money was demanded and initially a demand of Rs.30 lacs was made but he expressed his inability, finally the accused asked him to call his relations to bring Rs.10 lacs. What has been stated by this witness Daneshwar Sahu (PW1), the victim stated, there is no reason to disbelieve that he was abducted and taken to house where he was kept in captivity from 22.06.2015 to 23.06.2015. He has clearly stated that after he was tied up, all the three accused started threatened with knife. His evidence is emphatic that demand of ransom was made. Therefore, all the four ingredients of commission of offence under Section 364-A of IPC are made out. Section 364-A reads as below :

“364A. 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.”

14. A careful reading of the aforesaid provision would reveal that for commission of offence under Section 364-A of IPC, it is required to be proved that kidnapping, abduction or detention of person after kidnapping or abduction was done to compel the Government or [any foreign State or international intergovernmental organization or any other person] to do or abstain from doing any act or to pay a ransom. Further, in order to constitute offence under Section 364-A, it is also required to be proved that after kidnapping or abduction or detention, the person so kidnapped, abducted or detained is given threat to cause death or hurt or the offender by his conduct gives rise to reasonable apprehension that the person so kidnapped, abducted or detained may be put to death or hurt or where such hurt or death is actually caused to such person.

15. The submission of learned counsel for the appellant that present could at the best be a case of commission of offence under Section 347 or 365 of IPC is liable to be rejected because those are the offences which do not involve a demand for ransom. Moreover, the element of threat of death or hurt or actually causing death or hurt is not required to be proved. Further, in a case where person abducted has reasonable apprehension of he being put to hurt or kill by the conduct of the appellant on demand of ransom, it would be a case of commission of offence under Section 364-A and not under Section 347 or 365 IPC because such ingredients of demand of ransom and threat, apprehension or actually causing of death or hurt are not there in those provisions.

16. Learned counsel for the appellants has laid great emphasis on the submission with regard to the doubt regarding identification mainly on the basis that one of the prosecution witnesses Srikant Soni (PW3), who has been examined as witness of memorandum of the accused and seizure has stated that he had gone to police station upon being called by police people along with Daneshwar Sahu and there they had seen the accused and further that the Magistrate who conducted identification parade and the witnesses have not been examined.

17. These two circumstances would have assumed significance had it been a

case of victim having seen the incident in flash of moment, all of a sudden or in darkness or from quite a distance. But present is not a case of such nature. This is case where victim Daneshwar Sahu was kept in captivity from 22.06.2015 to 23.06.2015 until he was released. These 24 hours of the day and night where the Daneshwar Sahu was kept in captivity of the appellants and the third accused where they had tied his face and he was threatened, followed by demand of ransom requiring the victim to call his own relatives and staying with those accused. A victim in such situation would never forget his lifetime, faces of those who kept in confinement and administered threat or asked for ransom. The victim has remained firm on the identification of the two appellants in the Court during trial. He has very clearly stated regarding identification parade having been carried out in his presence and he having identified and having clearly denied the suggestion that he was already shown the accused or that their faces were identified in newspaper report or otherwise. His statement is that the victims faces were not shown in the newspaper and their faces were covered. In the cross-examination, nothing has been elicited to doubt the testimony with regard to identification because it is not a case where the appellant and victim are known to each other, as the appellants are resident of another city in another State. They are not known to the victim. There is no reason why the victim would falsely implicate two persons other than those with whom he had abducted and demanded ransom. If the victim has remained firm, all other doubts raised must pale into insignificance and we would say that this is a case where there does not exist any reasonable doubt with regard to the involvement of appellant in the alleged commission of offence and therefore, for that reason, we are of the firm view that there is no reason to doubt the dock identification of the accused by the appellant during trial. The submission with regard to giving a call by Rohit and collection of money only by Rohit and failure of the prosecution to collect the money from the accused and present appellant does not cause any dent to the prosecution story with regard to the conspiracy hatched by appellant and the third accused. It is well recognized that conspiracy is hatched in secrecy and, therefore, it is difficult to find a direct evidence. Inference, however, can be drawn from established facts and circumstances to come to the conclusion regarding conspiracy. In this regard, what has been laid by the Supreme Court in the case of **Vijayan @ Rajan Vs State of Kerala, 1999 (3) SCC 54** is relevant which is extracted herein below:

"11.....To bring home the charge of conspiracy within the ambit of [Section 120B](#) of the [IPC](#) it is necessary to establish that there were an agreement between the parties for doing

an unlawful act. It is no doubt true that it is difficult to establish conspiracy by direct evidence and, therefore, from established facts inference could be drawn but there must be some material from which it would be reasonable to establish a connection between the alleged conspiracy and the act done pursuant to the said conspiracy....."

18. True, it is that there is no allegation of the appellant giving a phone call or collecting money but in view of quantity of reliable evidence of the victim, himself, that these two appellants had kept in captivity and demanded ransom along with third accused Rohit, who is said to have given call and collected money, the appellants being involved in the conspiracy cannot be doubted. Number of citations made are distinguishable on the facts and in those cases, it was found that the ingredient of commission of offence under Section 364-A of IPC were not made out.

19. In the result, we do not find any ground to interfere with the impugned judgment of conviction and order of sentence.

20. The appeal is accordingly dismissed.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Rajani Dubey)
Judge