

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

CRA-D-No.357-DB of 2014 (O&M)
DATE OF DECISION : 6th SEPTEMBER, 2018

Umesh Kumar

.... Appellant

Versus

State of Punjab

.... Respondent

CRA-D-No.457-DB of 2014 (O&M)

Karan Gupta & another

.... Appellants

Versus

State of Punjab

.... Respondent

**CORAM : HON'BLE MR. JUSTICE A. B. CHAUDHARI
HON'BLE MR. JUSTICE B. S. WALIA**

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Present : Mr. Saurab Arora, Advocate
for the appellant in CRA-D-357-DB-2014.

Ms. Raminder Kaur, Advocate
for the appellants in CRA-D-457-DB-2014.

Ms. Anju Arora, Additional Advocate General, Punjab.

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A. B. CHAUDHARI, J.

1. Being aggrieved by the judgment dated 29.10.2013 and order dated 30.10.2013 passed by Additional Sessions Judge, Ludhiana in Sessions Case No.23123 of 2012 by which the trial Court convicted the appellants in these two appeals for offences under Section 364-A IPC and sentenced them to undergo rigorous imprisonment for life and under

Section 363 IPC they have to undergo rigorous imprisonment for four years and fine of ₹10,000/-, the present appeals were filed by them in this Court.

FACTS:

2. The prosecution case was that the complainant Arjan Singh has three children with two daughters. His younger daughter aged about six years was playing outside the house with other children. One unknown person came there and took his daughter along with him away and vanished. He carried out the search but to no use and as such made report to the police station. The police started searching and making investigation and found that all the three accused persons had connived with each other and kidnapped the daughter of the complainant and ask for ransom of ₹5,00,000/- which was brought down to ₹3,00,000/- for her release. The FIR was lodged under Sections 363, 364, 376 & 411 IPC. After investigation was completed the challan was filed before the trial Court. The prosecution led its evidence and closed its case while the defence was that of denial. Defence examined DW-1 Parmesh Kumar and DW-2Krishan Kumar Gupta and closed its case. The trial Court after hearing the learned counsel for the parties convicted the appellants as stated above.

ARGUMENTS:

3. In support of the appeals learned counsel for the appellants in both these appeals vehemently argued that the prosecution did not prove its case at least beyond reasonable doubt and therefore, appellants in both the appeals were require to be acquitted. According to him there

were inconsistencies in the prosecution evidence and the benefit of doubt should be given to the appellants. Learned counsel for the appellants submit that the appellants are poor persons and were involved by the police in the serious offence only because the appellants were working with the contractor-complainant who was a labour supplier. They then submitted that the prosecution did not examine any independent witness to prove the alleged recovery of money out of the ransom money taken from the complainant. The learned counsel then submitted that the prosecution did not prove that the money recovered from the appellants was the same money that was allegedly paid by way of ransom. The learned counsel for the appellants then submitted that a false case was slapped against the appellants and, therefore, the appellants are required to be acquitted by this Court.

4. *Per contra*, learned counsel for the State submitted that the prosecution has proved its case beyond reasonable doubt and there are eye witnesses to the appellants taking away the daughter of the complainant with them and thereafter demanded ransom. The counsel for the State then submitted that immediately the recovery of money was effected from the appellants that was paid as ransom. The accused persons were known to the complainant and his brother and, therefore, the prosecution proved its case so also their identity beyond reasonable doubt. As to the conviction under Section 364A IPC, the learned counsel for the State contended that there is evidence of threat being imparted by the accused persons for demanding ransom after the kidnapping and

therefore, the conviction under Section 364A IPC is well justified so also the sentence. She therefore, prayed for dismissal of the appeal.

CONSIDERATION:

5. We have heard learned counsel for the rival parties at length. We have carefully gone through the entire evidence tendered by the prosecution before the trial court. Insofar as the aspect of the kidnapping of the small girl by the appellants, is concerned, we find that there is sworn testimony of the father of the girl PW-1-Arjan Singh, who deposed as under in his evidence:

“Nisha Kumari is my second child. On 18.02.2012 (wrongly typed as ‘24.03.2012’) at about 5:00P.M. she was playing in a field with her friends one clean shaven person kidnapped her and took her away along with one more person on one black motorcycle Pulsar. We conducted the search of our daughter. Then I was going to inform the police, the police met me at T-point village Kanganwal and recorded my statement Ex.PA. I signed it in Hindi. My signatures is Ex.PA/1. Police reached at the spot and verified the facts. On 18.02.2012 I received I received phone call at 10:40 P.M. on my mobile of kidnappers and they raised the demand of Rs.5.00 Lacs and they told me that they will inform me about the place where I will deliver the money or they threatened me and

stopped me from informing the police. I informed the police on the same date. On 19.02.2012 I was present near GLADA ground, police handed over one bag consisting Rs.3.00 Lacs to me nike was written on the bag and one symbol of hockey was knitted with red thread on the bag. Police instructed me to deliver that bag to the kidnappers. I started waiting for kidnappers there, two clean shaven persons called me (sic) by my name who were on bicycle I went near them and recognized them those were Anil Kumar @ Kalu S/o Ganor Paswan who reside near my house and working as compounder with Dr. J.P. and the other person was Umesh Kumar S/o Moti Lal who use to visit Anil Kumar at his clinic. I handed over the bag to them they instructed me to went back and told me that after sometime I would get my daughter back and they will inform me on phone then Anil Kumar called two another persons as Karan and Ram chander and told them that they have received the money. I identified Ram Chander and Karan Gupta who use to visit the clinic where Anil Kumar worked, Umesh Kumar was driving the bicycle and Anil Kumar set on back seat with the bag. The whole proceedings were done under the

instructions of police. On next day I received phone call at about 4:30 P.M. at my mobile from the phone no.73559-61708 and kidnappers informed me that my daughter was standing near railway crossing near Sanatan Dharam Mandir, Jiwan Nagar Chowk, Ludhiana. I reached there with police party, many people were gathered there. I identified my daughter vide memo Ex. PB and she was handed over to me vide memo Ex.PC.

6. Similar is the evidence of brother of the complainant PW-2-Surinder Singh and the relevant portion of the evidence is reproduced below:

“Stated that on 18.02.2012, I was going to meet my brother Arjun Singh. When I reached near the house, I saw two persons going on a motorcycle and my niece Nisha was sitting in between them and she was crying. I heard her cries. I was not sure at that time that she was Nisha. I reached the house of my brother. My brother was searching for Nisha. I told him that I saw her with two persons on motorcycle. We conducted the search of my niece. Then, my brother receive phone call on his mobile. Accused demanded ransom of Rs.5 lacs for releasing Nisha.

On 19.2.2012 in morning, accused again gave call on the mobile of my brother and repeated their demand. I identify one person present in the court who was going on motorcycle on 18.2.2012 with my niece. Police arrested four persons in this case namely Kalu, Ram Chander and the name of other two accused I do not remember at present. Again said, name of third accused was Umesh. I identify the accused present in Court today.”

7. Reading of the evidence of both the above witnesses shows that both the witnesses are in fact the eye witnesses and they clearly identified the accused persons before the Court also. In fact, they were known to the complainant. The submission that there is no evidence of kidnapping will have to be rejected and consequently we hold that the appellants had kidnapped the small girl from the house for demanding ransom.

8. As to the demand of ransom, again looking at the evidence of PW-1 and PW-3-ASI Kuldeep Singh, we find that not only that there is evidence of demand of ransom and payment thereof in the sum of ₹3,00,000/- but there is recovery also from the appellants of the respective amounts. The relevant portion of the evidence of PW-3-ASI Kuldeep Singh reads thus:

“Accused Umesh gave his disclosure statement to the I.O. that they kidnapped Nisha and got ransom money of Rs.3 lacs from her father, he

had kept concealed Rs.75,000/- in his room and he can get recover the same. His statement Ex. PW3/M was recorded.

Accused Ram Chander gave his disclosure statement to the I.O. that they kidnapped Nisha and got ransom money of Rs.3 lacs from her father, he had kept concealed Rs.75,000/- in his room and he can get recover the same. His statement Ex. PW3/N was recorded.

Accused Anil Kumar alias Kalia gave his disclosure statement to the I.O. that they kidnapped Nisha and got ransom money of Rs.3 lacs from her father, he had kept concealed Rs.60,000/- in his room and he can get recover the same. His statement Ex.P3/O was recorded.

Accused Karan Gupta gave his disclosure statement to the I.O. that they kidnapped Nisha and got ransom money of Rs.3 lacs from her father, he had kept concealed Rs.75,000/- in his room and he can get recover the same. His statement Ex. PW3/P was recorded.

The recoveries were effected as per the demarcation of accused. IO sealed the recovered currency notes into plastic boxes separately and sealed the boxes with his seal impression AP and

the parcels were taken into police possession vide memo Ex.PW3/Q to PW3/T. IO prepared the site plans. I.O. recorded our statements.

On 22.2.2012, accused Anil Kumar suffered his disclosure statement that he has kept concealed the motorcycle no.PB-10-BK-6355 near his room which was used by him during occurrence which was stolen by him from near Eastman Chowk and he can get the same recovered. His statement Ex. PW2/U was recorded.

On the same day, accused Ramesh Kumar suffered his disclosure statement that he has kept concealed the cycle near his room which was used by them during occurrence and he can get the same recovered. His statement Ex. PW3/V was recorded.”

9. The above evidence, to our mind, clearly proves the case of kidnapping for ransom. We, therefore, reject the submissions made by learned counsel for the appellants.

10. The next important question that arises for consideration is whether the conviction under Section 364 A IPC could have been recorded by the trial Court. Section 364 A IPC reads thus:

364A. 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.

11. Reading of the above Section clearly shows that important requirement is that accused should have threatened to cause death or the conduct should have been such that there could be reasonable apprehension that such person may be put to death or hurt or causes hurt or death of such person. This requirement was highlighted by the trial Court and put at serial No.3 in its judgment. We have closely read the findings of the trial Court to find out whether the trial Court has given any specific finding as to the above aspect. However, we find that there is none. We have, therefore, seen the evidence of witnesses and in particular PW-1-Arjun Singh-Complainant and PW-2-Surinder Singh-both of the complainant, to find out whether any threat was imparted. We do not find any.

12. Learned State counsel then submitted that there is a mention about threat in evidence of PW-1. However, we do not agree that any such threat was given by the accused persons to PW-1 nor he deposed about it. The threat that has been spoken of is 'not to inform the police'.

Thus the threat in relation to physical harm etc. or any conduct of the appellants showing such apprehension is not to be found in any evidence, including that of PW-1-complainant. In the absence of such evidence, we do not think that serious offence under Section 364 A IPC could be said to have been proved. We, therefore, hold that the trial Court was wrong in convicting the accused for the offence punishable under Section 364 A IPC and sentencing them accordingly.

13. As a sequel to the above findings we are of the firm opinion that the appellants must be held guilty of the offence under Section 363 IPC read with Section 34 IPC and we hold accordingly. The appellants had kidnapped a small girl for recovery of money from their own erstwhile employer. Certainly there was a breach of trust committed by the appellants only for recovering money from the complainant. We are, therefore, of the opinion that the maximum sentence provided by Section 363 IPC should have been imposed on them, without granting any remission. We also find that the appellants deserves to be slapped to the fine in the sum of ₹1,00,000/- each and to undergo in default the sentence of one year. In the result we make the following order:

ORDER

- (i) The CRA-D-No.357-DB of 2014 and CRA-D-No.457-DB of 2014, are partly allowed.
- (ii) The impugned judgment/order dated 29.10.2013/20.10.2013 passed by the learned Additional Sessions Judge, Ludhiana in Sessions Case No.23123 of 2012, convicting the appellants namely Umesh Kumar, Karan Gupta and Ram Chander, for

commission of offence punishable under Section 364-A of Indian Penal Code, 1860 and sentencing them to undergo Rigorous imprisonment for life, is set aside, and they are acquitted of the charge framed against them under Section 364A IPC;

- (iii) The impugned judgment dated 29.10.2013 passed by the learned Additional Sessions Judge, Ludhiana, in Sessions Case No.23123 of 2012, convicting the appellants, namely Umesh Kumar, Karan Gupta and Ram Chander, for commission of offence punishable under Section 363 IPC, is confirmed and the impugned order dated 30.10.2013 sentencing them as mentioned therein, is modified and they are sentenced to undergo rigorous imprisonment for seven years and shall pay fine in the sum of ₹1,00,000/- each; in default of payment of fine, shall undergo further imprisonment for one year each;
- (iv) No remissions shall be given to the appellants namely Umesh Kumar, Karan Gupta and Ram Chander, on any count in the matter of sentence.

(A. B. CHAUDHARI)
JUDGE

6th SEPTEMBER, 2018
'raj'

(B. S. WALIA)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>	<i>No</i>
<i>Whether Reportable:</i>	<i>Yes</i>	<i>No</i>