

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 697 of 2014**

Shatruhan Tandon S/o Bhonduram Tandon, Aged About 28 Years
R/o Manikpur Basti, Police Chauky Manikpur, P.S. Kotwali, Korba,
District Korba C.G.

----Appellant

Versus

State of Chhattisgarh Through Police Chauki Manikpur, P.S. Kotwali,
Korba, District Korba C.G.

---- Respondent

with**CRA No. 631 of 2017**

Rajendra Kumar Uraon S/o Teejram Uraon, Aged About 21 Years
R/o Kudrikhar, Police Chowki Urga, Police Station Kotwali, Korba,
District Korba C.G.

----Appellant

Versus

State of Chhattisgarh Through The Incharge, Police Chowki
Manikpur, Police Station Kotwali, Korba, District Korba, C.G.

---- Respondent

For Appellants	: Mr. Manoj Mishra, Advocate
For Respondent/State	: Mr. Santosh Bharat, PL

D.B.: Hon'ble Shri Justice Manindra Mohan Shrivastava**Hon'ble Smt. Justice Vimla Singh Kapoor****Order on Board****Per Manindra Mohan Shrivastava, J.****18/04/2019**

1. Since these two appeals arise out of the same judgment of conviction and order of sentence dated 18.09.2013 passed in Sessions trial No. 74/2011 convicting and sentencing the

accused/applicants as described below, they are being disposed off by this common judgment:-

Conviction	Sentence
Under Section 458 Indian Penal Code	7 years RI & fine of Rs. 1000/- in default of payment of fine additional RI for 1 year
Under Section 363/34 Indian Penal Code	3 years RI & fine of Rs. 1000/- in default of payment of fine additional RI for 6 months RI
Under Section 364(a) Indian Penal Code	Life Imprisonment & fine of Rs. 1000/- in default of payment fine additional RI for 1 year.
Under Section 323/34 Indian Penal Code	RI for 3 months.
Under Section 307/34 Indian Penal Code	RI for 2 years & fine of Rs. 1000/- in default of payment of fine RI for 6 months.
Under Section 25(1-b)(B) of Arms Act.	RI for 1 years & fine of Rs. 500/- in default of payment of fine additional RI for 3 months.
Under Section 25(1-b)(A) of Arms Act.	RI for 3 years & fine of Rs. 500/- in default of payment of fine additional RI for 3 months.
Under Section 27 of Arms Act.	RI for 3 years & fine of Rs. 500/- in default of payment of fine additional RI for 6 months.

2. The prosecution case which led to initiation of prosecution and conviction of the appellants is that on 21.06.2011, in the evening, the appellants came to the house of Manish (PW-4) and on the gunpoint his infant child aged about 2 ½ years, Mehul, was kidnapped. When Manish called for help, his neighbours came out and it is said that out of the two appellants, one Shatruhan Tandon could not escape and was caught at the spot, whereas, the other accused Rajendra Kumar Uraon ran away with the kidnapped child. On the basis of written report Ex. P-3, FIR was recorded in the police station. Formal arrest of appellant Shatruhan Tandon was made as he was caught red handed at the spot and tied down. Kidnapped child Mehul is said

to be recovered from a toilet situated behind the house of the appellant/Shatruhan Tandon. Later on, co-accused was also arrested and certain seizures were also made from him. The investigation culminated in filing of charge-sheet against the present appellants for alleged commission of offences under Sections 458, 363/34, 364(a), 323/34, 307/34 of IPC and 25(1-b) (B), 25(1-b) (A) and 27 of Arms Act. On the basis of the allegation contained in the charge-sheet, the learned trial Court framed charges against the appellants for alleged commission of offences under Sections 458, 363/34, 364(a), 323/34, 307/34 of IPC and 25(1-b) (B), 25(1-b) (A) and 27 of Arms Act. The appellants abjured their guilt and, therefore, were put to trial.

3. In order to prove its case, the prosecution came out with the version of eye witnesses particularly the father of the kidnapped child, Manish (PW-4) that the appellants trespassed in the house of the complainant Manish (PW-4) in the evening and on the gunpoint his son was snatched away, in which incident, Shatruhan Tandon was caught at the spot. Learned trial Court mainly relied upon the eye witness Manish (PW-4) and other witnesses to hold them guilty of commission of the offences. Since in the memorandum itself, it has come that upon being arrested, Shatruhan Tandon had confessed before the police that the child was kidnapped for ransom, the learned trial Court held both the appellants guilty of commission of offence under Section 364(A) IPC and sentenced to life imprisonment.

4. Assailing legality and validity of impugned judgment of conviction and order of sentence, learned counsel for the appellants would argue that the prosecution evidence of appellants' arriving in the house of complainant Manish and kidnapping his child Mehul on

gunpoint is highly improbable. It is argued that as per the evidence of the witnesses, the incident happened at about 7.30 in the evening and therefore, it was not possible for the witnesses to identify the accused. He submits that the appellants were not known to the father of the child or to any other witness who claim to have rushed to the spot on the call given by Manish (PW-4). Therefore, the appellants ought to have been put to identification parade which was not done, and therefore, the evidence is not reliable.

5. Next submission of learned counsel for the appellant is that there is no allegation of any gunshot fired from the fire arm said to be in possession of the appellants nor is there any report of armorer or ballistic expert that there was any gunshot fired nor any empty cartridge was found. Further submission of the counsel for the appellants is that the prosecution evidence of recovery of kidnapped child Mehul from the toilet situated behind the house of the appellant Shatruhan Tandon, is a concocted story because none of the witnesses of recovery of the child has supported the prosecution story of recovery of child from the stated place and all of them have stated that they had not accompanied the police up to the spot of recovery, but having come to know about recovery of child by the police, they had signed various documents in the Police Station. The next submission of learned counsel for the appellants is that even if entire prosecution evidence that the appellants arrived in the house of the victim Manish and kidnapped his child is proved, there is no evidence of appellants' having demanded any ransom from Manish. The so called confession made by the appellants before the police that the child was kidnapped for the purpose of demanding ransom, is not

admissible in evidence even to prove preparation of commission of offence. Therefore, under no circumstance it can be said that the appellants are guilty of commission of offence under Section 364(A) IPC. In that event, the appellant could only be convicted under Section 363 of IPC and as they have already undergone more than nearly 08 years of sentence, which is in any case more than maximum sentence that could be awarded under section 363, sentences under others provisions being less than 07 years, appellants are entitled to be released.

6. On the other hand the State counsel would argue that the prosecution case of appellants arriving in the house of Manish (PW-4) and kidnapping his child Mehul on gunpoint is proved from eye witnesses account of not only Manish (PW-4) but also number of neighbours who had gathered at the spot upon a call given by Manish and his wife when their child was being kidnapped. It is next argued that recovery of child has been proved by the evidence of I.O. (PW-8) and even if the evidence of independent witnesses of recovery of child his doubtful, there is no reason to disbelieve the evidence of I.O. who recovered the child from the toilet situated behind the house of the appellant/Shatruhan Tandon. It is argued that, in fact, Shatruhan Tandon was caught red handed. It was further argued that as the intention of the appellants was to kidnap the child for ransom which was clearly admitted by them before the police, therefore, even if they could not get any opportunity of demanding ransom, nevertheless, the offence under Section 364(A) would be made out for which the minimum sentence is life imprisonment.

7. We have heard learned counsel for the parties and perused the record.

8. Manish (PW-4) is the father of Mehul - an infant child, aged about 2 ½ years. In his evidence, it is stated that a report was lodged Ex. P-3 in the Police Station regarding his child having been kidnapped. He has also proved his report Ex. P-3. In this written report, it has been clearly stated that at about 7.30 pm, two boys tress-passed in his house and one of them, on the gunpoint, threatened him and his wife to keep quiet and the other one caught hold of his son, Mehul, and started going back where-after, he called for help. When he and his wife gave call, one of the accused attempted to fire gunshot, but it did not work. By that time, neighbours R.K. Sinha, Dinesh Singh and K.K. Dubey had arrived. One of the accused was caught hold of on the spot and the other one who was keeping the child in his lap ran towards GM's office. Thereafter, the matter was reported over telephone. It was also stated that upon inquiry from one of them, who was caught at the spot, it was disclosed that the child was kidnapped for demanding ransom.

9. On the basis of the aforesaid written report, FIR Ex.P-4 was recorded. In the Court statement, Manish has clearly stated regarding the commission of offence by the present appellants by stating that on 21.06.2011, the appellants tress-passed in his house, one of them was holding 'Desi Katta', on the gunpoint his child was kidnapped, one of them namely, Shatruhan Tandon was caught at the spot whereas, the other one, ran away from the spot. He further stated that when the police arrived at the spot, Shatruhan Tandon confessed that the child was kidnapped to demand ransom.

10. Similar is the evidence of other prosecution witnesses, namely, Dinesh Kumar Singh (PW-2). In the present case, appellant Shatruhan Tandon was caught at the spot itself and both the appellants have been identified during the trial.

11. The child was recovered from the toilet situated behind the house of Shatruhan Tandon - one of the appellants. Evidence to this effect has been given by the I.O. Grahani Singh (PW-8). True it is, that the independent witnesses have not supported the proceeding of recovery of child, we are inclined to rely upon the evidence of I.O. with regard to the recovery of child.

12. However, we find that the prosecution case with regard to commission of offence under Section 364(A) of IPC could not be proved beyond doubt. Present is a case where child was kidnapped and one of the accused was caught red handed. Whether the child was kidnapped for ransom is not proved beyond doubt because, the prosecution case with regard to kidnapping of child for ransom is based only on confession given by Shatruhan Tandon before the Police which is clear from evidence of Manish (PW-4), the father of the child. Simple kidnapping is an offence punishable under Section 363 IPC. When kidnapping is done for the purposes of maiming a minor child for begging, it is punishable under Section 363(A) of the IPC. When kidnapping or abducting is done in order to commit murder the same is punishable Section 364 of IPC. In case where the prosecution proves that the kidnapping has been done for ransom, it would be punishable under Section 364-A of IPC.

13. In the present case, the prosecution could not come out with clinching evidence that after kidnapping of the child, a demand of

ransom was also made. Therefore, to that extent the conviction of appellants is not sustainable in law.

14. Conviction of the appellants in all other aspects is however affirmed. In the result the appeal is partly allowed. The conviction of appellants under Section 364-A of IPC is set aside and it is altered under Section 364 r/w 34 of IPC. Conviction of the appellants for the offences under Section 323, 307, 25 (1-B) of the Arms Act as also 27 of the Arms Act is affirmed.

15. The appellants are sentenced to 7 years of R.I. for commission of offence under Section 364 r/w 34 of IPC. As the appellants have already undergone more than 7 years of sentence and the sentence awarded to them for commission of other offences is less than 7 years which have been directed to run concurrently, the appellants are entitled to be released from jail.

16. The appeals are accordingly partly allowed.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Vimla Singh Kapoor)
Judge