

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 189 of 2013**

- Rakesh Kumar Singh @ Babua S/o Jiyut Singh Aged About 28 Years R/o Village Sakin - Belbehara PS Manendragarh Distt. Korea C.G.

---- Appellant

Versus

- State Of Chhattisgarh Through Incharge PS Manendragarh Distt. Korea C.G.

---- Respondent

&

CRA No. 195 of 2013

- Ashish @ Rinku S/o Ganesh Namdev Aged About 30 Years R/o Kali Mandir Road, Manendragarh, PS Manendragarh, Distt. Koriya C.G.

---- Appellant

Versus

- State Of Chhattisgarh Through The SHO, PS Manendragarh, Distt. Koriya C.G.

---- Respondent

&

CRA No. 244 of 2013

- Nikhil @ Chhotu S/o Gurubaksh Kakad Aged About 22 Years R/o Kalimandir Road, Manendragarh, Distt. Korea C.G. PS Manendragarh, Chhattisgarh

---- Appellant

Versus

- State Of Chhattisgarh Through SHO, Manendragarh, Distt. Korea C.G.

---- Respondent

&

CRA No. 261 of 2013

- Ramu Kori S/o Ramesh Prasad Kori Aged About 21 Years R/o Manendragarh Near Railway Crossing Distt. Korea C.G.

---- Appellant

Versus

- State Of Chhattisgarh Through SHO, PS Manendragarh, Distt. Korea C.G.

---- Respondent**&****CRA No. 384 of 2013**

- Shanker Sahu @ Golu S/o Laxman Sahu Aged About 22 Years R/o Chainpur PS Manendragarh Distt. Korea C.G.

---- Appellant**Versus**

- State Of Chhattisgarh Through SHO, PS Manendragarh, Distt. Korea C.G.

---- Respondent

For Appellants	:	Ms. Sharmila Singhai, Smt. Usha Chandrakar, Shri Shakti Raj Sinha, Shri Anil Gulati and Shri Harshwardhan Parganiha, Advocates
For State	:	Shri Arvind Dubey and Shri Suryakant Mishra, Panel Lawyers

Hon'ble Shri Justice Manindra Mohan Shrivastava**Hon'ble Smt. Justice Rajani Dubey****Order On Board****09/01/2019**

These appeals filed by five convicts namely Rakesh Kumar Singh @ Babua, Ashish @ Rinku, Nikhil @ Chhotu, Ramu Kori and Shanker Sahu @ Golu seek to assail their conviction under the impugned judgment of conviction and order of sentence dated 15/02/2013 passed by the Second Additional Sessions Judge, Manendragarh, District – Koriya in Sessions Trial No.39/2011 by which, these five appellants have been held guilty of commission of offence and sentenced as described below -

	<u>Conviction</u>	<u>Sentence</u>
1	U/s 364-A/34 of IPC	Life imprisonment with fine of Rs.1000/- each (in

		default of payment of fine, additional R.I. of five months)
2	U/s 368/34 of IPC	R.I. for 7 years and fine of Rs.500/- each (in default of payment of fine, additional R.I. of three months)
3	U/s 386/34 of IPC	R.I. for 10 years and fine of Rs.1,000/- each (in default of payment of fine, additional R.I. of four months)

2. According to the prosecution story, Deepak Kesharwani (PW1) lodged a missing report in Ex.P/1 stating that his son, a minor, had gone missing while he was playing outside the house in the evening and his whereabouts are not known. Later on, upon receipt of phone call, FIR in Ex.P/2 was registered at the instance of Deepak Kesharwani that his child has been kidnapped for ransom. Another child of the same location, who is said to be with the kidnapped child while they were playing namely – Harsh Namdev (PW6) is said to have disclosed that the child was taken on the Motor Cycle by certain persons. Having come to know about this, the appellants – Ashish @ Rinku, Ramu Kori, and Shanker Sahu being suspects were taken into custody and it is said that their respective memorandum statements in Ex.P/5, Ex.P/7 and Ex.P/8 were recorded revealing that they along with two other accused namely – Nikhil @ Chhotu Kakkar and Rakesh Singh @ Babua had planned kidnap of the child – Ansh Kesharwani for ransom and the child was taken to the house of Rakesh Singh in Village – Belbehra and kept there. Further story of the prosecution is that later on, when the police team raided the house of one Ratilal (PW3), the child was recovered and one of the appellants – Nikhil Kakkar was also found there along with the child who was also taken into custody as one of the person involved in the act of kidnap for ransom. Another accused – Ramu Kori, who is said to have accompanied Nikhil Kakkad on motor cycle, in which the child was kidnapped, was also arrested and upon investigation, charge sheet was filed against all the appellants. Learned Trial Court framed charges for alleged commission of offence under Section 364-A/34, 368/34

and 386/34 of IPC against each of the appellants. The appellants abjured guilt and therefore, put to trial.

3. The prosecution led evidence, particularly the evidence of child kidnapped and then recovered from the house of Ratilal (PW3) along with Nikhil Kakkad and the evidence of the kidnapped child, his minor friend – Harsh Namdev (PW6), the evidence of the investigating officer and also the witness of memorandum of Ashish, Ramu and Shanker. Learned Trial Court, relying upon the evidence of the prosecution, held all the appellants guilty of commission of offence and sentenced as described above.

4. Learned counsel for respective appellants argue that the entire case of the prosecution with reference to the kidnapping of the child by the present appellants is extremely doubtful and the prosecution has failed to prove beyond reasonable doubt. On behalf of all the appellants, a common argument has been taken that as far as identification of the appellants is concerned, the child witness – Ansh Kesharwani (PW14), who is said to have been kidnapped, identified the accused in the doc, in the cross examination, it has been elicited that the child was fully tutored and infact, the child was remaining present on the earlier dates of hearing and it was repeatedly familiarized with the faces of the accused and told that he has to identify them.

5. On behalf of the appellant – Nikhil @ Chhotu, it has been argued that the house wherefrom the child is said to have been recovered, belongs to Ratilal and his two sons – Santlal (PW8) and Basant Lal (PW10) who have been examined. The prosecution witnesses have clearly admitted in their cross examination that they could not clearly see as to who was the person who had stayed with the child witness and they are naming Nikhil as guided by the police. It is next argued that the two recovery witnesses – Vishwanath Gupta (PW7) and Ashok Kesharwani (PW13) are not reliable

as independent witnesses of recovery because from their evidence, it is revealed that the recovery panchanama was signed by them only in the police station. Therefore, it is extremely doubtful that recovery of child had taken place in their presence and that, at the time of recovery of child from the house of Ratilal, Nikhil was also found there.

6. On behalf of appellants -Shanker Sahu, Ashish @ Rinku and Ramu Kori, it has been argued that their involvement in the alleged commission of offence is based mainly on their memorandum statement and the recovery of child. The two recovery witnesses - Vishwanath Gupta (PW7) and Ashok Kesharwani (PW13) have admitted in their cross-examination that these persons were not interrogated by the police in their presence and they do not know, what disclosure was made by the accused. As far as Ashish @ Rinku is concerned, it is argued that his involvement in the offence is only based on doubt because while two children were playing which included his own nephew – Harsh Namdev (PW6), he gave them money to buy toffee for them and except this, no other role has been alleged. As the identification itself is doubtful, only on the basis of doubtful memorandum statement of Ramu Kori and Shanker Sahu, they cannot be said to be involved in the alleged commission of offence.

7. Learned counsel for the appellants also argued on common length that in so far as commission of offence under Section 364-A of IPC is concerned, the same is not made out because one of the essential ingredients of hurting or causing death or doing any act to give an impression of likely to cause death or actually causing hurt or death is not proved by the prosecution beyond reasonable doubt and infact, there is no case of the prosecution that the kidnapped child was either hurt or murdered. It is argued that the child was recovered within 12 hrs and the allegation of threat is highly doubtful because it does not find place either in the two reports i.e. Ex.P/1 and Ex.P/2 nor finds corroboration from the statement of Sajjad Khan (PW5), Ibrahim Mohammed Quirashi (PW9) and Rahul Kesharwani (PW11), who had deposed that when the

second call for ransom had come, they were also present and they heard the conversation between Deepak Kesharwani (PW1) and the caller, in all probability, one of the accused who had kidnapped the child. For the same reason, case under Section 368 IPC is not made out because Section 368 IPC is not at all applicable as this provides for punishment to those who knowingly that the person has been kidnapped or has been abducted and kept in wrongful confinement and that Ratilal and his sons have not been made accused in the case.

8. Last submission of learned counsel for the appellants is that even if it is found that the appellants are found involved in the offence of kidnapping the child and some amount was demanded, without there being any element of hurt or causing death, at the most, it can be said to be a case of commission of offence under Section 363 IPC for which sentence is maximum seven years and Nikhil has undergone more than 6½ years of imprisonment. Others have also undergone imprisonment of few days.

9. On the other hand, learned State counsel submits that kidnapping of child is proved from the evidence of Deepak Kesharwani (PW1) -the father of the child and that the child was recovered from another village – Belbehra from the house of one Ratilal and the recovery of the child is proved from the evidence of not only the investigating officer but also the recovery witnesses - Vishwanath Gupta (PW7) and Ashok Kesharwani (PW13) as also owner of the house – Ratilal (PW3) and his two sons, Santlal (PW8) and Basant Lal (PW10). He next submits that as far as identification of the appellants is concerned, the kidnapped child – Ansh Kesharwani (PW14) and his friend, a minor child – Harsh Namdev (PW6), both have identified the appellants, though Harsh, in his evidence, has deposed regarding involvement of Ashish @ Rinku, Shanker Sahu @ Golu and Nikhil Kakkad. He would submit that the doubt, if any, with regard to identification by kidnapped child – Ansh Kesharwani (PW14) is resolved as the involvement of Ashish @ Rinku, Shanker Sahu @ Golu and

Nikhil Kakkad is corroborated from the evidence of Harsh Namdev (PW6). Moreover, involvement of Nikhil Kakkad is also corroborated from the evidence of recovery witnesses - Vishwanath Gupta (PW7) and Ashok Kesharwani (PW13).

Further submission of learned State counsel is that Deepak Kesharwani (PW1) has clearly deposed that after his child was kidnapped, phone call was received and he was asked to pay Rs.20 lakhs and was also threatened of dire consequences that his son would be murdered if any attempt is made to disclose to anybody else and this statement has remained uncontroverted in the cross examination. Therefore, all the ingredients of commission of offence under Section 364-A IPC are made out.

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

11. Kidnapping of the child is proved from the evidence of his father – Deepak Kesharwani (PW1) who has deposed that while his child Ansh Kesharwani was playing in the colony near Kalimandir Road, he eloped and despite search, he was not found and initially, he went to the police station – Manendragarh and also lodged missing report in Ex.P/1. He further deposed that he had received a phone call from unknown person that his child has been kidnapped and is with them and he was asked to pay ransom of Rs.20 lakhs and not to disclose this demand to anybody. In the cross-examination of this witness, discrepancy in the time of lodging missing report (ExP/1) has been elicited and also to discredit the testimony of this witness on account of demand made prior to lodging of report, he had received phone call that the child was kidnapped which was not disclosed by him in the missing report.

We have carefully gone through the evidence of this witness and two reports and the evidence of the investigating officer and also the evidence of Sajjad Khan (PW5), Ibrahim Mohammed Quirashi (PW9) and Rahul Kesharwani (PW11). There is discrepancy as to at what point of time, missing report was lodged because in the missing report (Ex.P/1), there is overwriting in the time of lodging missing report. We

have closely looked into the documents and found that original time was written as 8:45 hrs. and later on, it was changed to 20:05 hrs. FIR is said to have been lodged at 8:45 PM which is also clear from the Rojnamcha Sanha (Ex.P/23). From this, we can only infer that as far as lodging of missing report is concerned, it was not clear that at what time, it was lodged. In so far as FIR is concerned, we have no doubt that the FIR was lodged on 03/01/22011 at 20:45 PM in which disclosure was made by Deepak Kesharwani that his son was kidnapped and ransom of Rs.20 lakhs was demanded.

12. Recovery of the child – Ansh Kesharwani from the house of Ratilal is also proved from overwhelming evidence brought on record by the prosecution. While the investigating officer has stated regarding recovery of child from the house of Ratilal, on this aspect, his evidence is supported from the evidence of the child itself, Vishwanath Gupta (PW7) and Ashok Kesharwani (PW13) and also the evidence of Santlal (PW8) and Basant Lal (PW10) who are sons of Ratilal. He has deposed that on 04/01/2011, after having recorded memorandum statements, he had recovered Ansh Kesharwani from the possession of Nikhil Kakkad and *Baramadgi Panchnama* (Ex.P/6-A) was prepared in presence of the witnesses.

Vishwanath Gupta (PW7) has deposed that in his presence, Ansh Kesharwani was recovered from a house at Belbehra though he does not know the owner of the house. He deposed that he had gone to the house in the night. This witness states that a recovery panchnama was prepared in Ex.P/6 and has proved his signature. In his cross-examination, it has been elicited that his signatures were obtained only after police party came back with the child in the police station and therefore, it is argued that his evidence is liable to be disbelieved. We, however, find that not only this witness, Ashok Kesharwani (PW13) has also supported the evidence of this witness as far as recovery of the child from the house at Belbehra is concerned. Though this witness states that in the recovery panchnama (Ex.P/6), he has also signed, in his cross-examination, it has been elicited that he signed panchnama along with

Vishwanath Gupta (PW7). This also shows that he had also put his signature in the recovery panchnama in the police station only. We find that this witness, at later point when put to cross-examination, emphatically stated that he had signed the documents where concerned proceedings were drawn.

13. The child witness – Ansh Kesharwani (PW14) has also stated in his evidence that he was kidnapped on a motor cycle, taken to another place and kept in a house. Later on, police reached there. In the cross-examination, this witness has been mostly cross-examined on the aspect of identification and whether he knew the person in whose house he was kept but nothing has been elicited in his cross-examination to discredit his testimony that he was kidnapped and taken to the house at Belbehra and kept until he was released by the police. He is a child witness and we do not find any ground to disbelieve atleast this part of the statement of the witness of he being kidnapped and recovered by the police.

14. There are two other witnesses i.e. Santlal (PW8) and Basant Lal (PW10) i.e. sons of Ratilal (PW3) who have stated that the child was brought and kept in their house in the night along with two persons until the police reached there and recovered the child. Therefore, there is absolutely no doubt that the child was finally recovered from the house of Ratilal. However, the question which arises is as to whether these appellants were actually involved in kidnapping of the child.

15. As far as Nikhil Kakkad is concerned, his involvement in the incident is based on the evidence of Harsh Namdev (PW6), Ansh Kesharwani (PW14), Vishwanath Gupta (PW7), Ashok Kesharwani (PW13) and of-course the evidence of the investigating officer himself.

The kidnapped child – Ansh Kesharwani (PW14) during the course of his examination in the Court identified this person i.e. Nikhil Kakkad as the one with

whom, he had been taken to the house at Belbehra and where he was staying until he was recovered. Serious doubt has been created on the veracity of this part of the statement wherein it has been extracted from the cross-examination that the child was coming to the Court since three days and repeatedly watching the accused including Nikhil and the persons involved in the case. Therefore, it is necessary to look for corroboration of identification of Nikhil as the person who had taken the child to the house at Belbehra and kept him there until the police people reached there. For this purpose, we are inclined to look into the statement of Vishwanath Gupta (PW7) and Ashok Kesharwani (PW13), who are independent witnesses and both have stated in their evidence that they had gone along with police, in the house of Ratilal, wherefrom, the child was recovered and Nikhil was very much there. Challenge to veracity of testimony of they being present at the spot and their signatures were obtained after recovery of the child, in our opinion does not discredit their testimony. We also find corroboration of the prosecution case of involvement of Nikhil Kakkad from the evidence of Harsh Namdev (PW6) who has given details of the incident in which the child was kidnapped. He has stated in his evidence that one of the persons who had come in the motor cycle and taken the child – Ansh Kesharwani along with him was Nikhil whom he identifies with the name “Manoj”. Much emphasis has been laid on this aspect that the child has been tutored to name Manoj but we do not find that this should be sufficient to disbelieve the child's statement of identifying Nikhil as one who came on motor cycle and taken him along with other person.

16. We, thus, find that as far as Nikhil is concerned, there is full proof evidence, led by the prosecution to prove his involvement that he is the person who had taken the child in the motor cycle and he is the person from whose custody, child was recovered.

As far as Ashish @ Rinku is concerned, his involvement in the alleged incident is based mainly on the testimony of his nephew and alleged memorandum of recovery given by him in Ex.P/5 on which, the prosecution claims to have recovered the child

from the house at Belbehra. Though, we find that as far as memorandum of Ashish is concerned, testimony of memorandum witnesses i.e. Vishwanath Gupta (PW7) and Ashok Kesharwani (PW13) show that when Ashish was being interrogated by the police, these witnesses could not overhear as to what was stated by the above accused, but then, the evidence has come that this person also had involvement in the alleged commission of offence. Harsh Namdev (PW6) has stated that Ashish @ Rinku, on more than one occasion, when he was playing with Ansh Kesharwani, had given money to buy toffee. He has also stated that when he along with Ansh had gone to the shop to buy toffee, another person came there and he had taken Ansh and him both in the motor cycle. This child witness has stated in the cross-examination that when he and Ansh were taken in motor cycle, on way, his uncle Rinku met with them and pulled him out and taken home whereas, Ansh was taken away in the motor cycle. He deposed that his uncle Rinku warned him not to disclose the incident to anybody. This sufficiently indicates the role of Rinku in the alleged commission of offence as one of those, who were involved in kidnapping of the child and for this, he had used his own nephew – Harsh Namdev. Initially, Harsh Namdev and Ansh Kesharwani both were taken in the motor cycle, which was accompanied by Nikhil, on way, Harsh was taken out of the motor cycle and he was picked up by none other than Ashish @ Rinku and dropped back to his house. It is also worth noticing here that if Ashish had no involvement, then his natural conduct would have been to immediately inform the police when search for the child was going on. The evidence on record atleast prove beyond doubt that he was also one of the suspects and brought in the police station. If he was not involved, his natural conduct would have been to inform his parents, when the child was taken away by Nikhil. But it is not his case and nor his conduct.

On the other hand, prosecution case is that memorandum statement was given by this accused after taking into custody. Therefore, involvement of Ashish @ Rinku is also proved. However, as far as other accused are concerned, we find that prosecution has not been able to prove the case beyond reasonable doubt. With

doubtful identification of Rakesh, Shanker and Ramu by the kidnapped child, we looked for corroborative evidence but found nothing. While examining whether memorandum statement of Ashish in Ex.P/5 is reliable, we have already commented on the evidence of Vishwanath Gupta (PW7) and Ashok Kesharwani (PW13) and we have found that their evidence is reliable only to the extent of recovery of child and not with regard to recording of memorandum statement of Ashish.

Similar is the situation in the case of Ramu Kori and the evidence is doubtful whether memorandum statement of Ramu was recorded in their presence and as to whether it was Ramu, on whose disclosure, child was recovered from the house at Belbehra. Ramu has also not been identified by Harsh Namdev (PW6). Therefore, the case against Ramu becomes highly doubtful particularly because at the time of recovery of child, he was not found present at the spot.

As far as Shanker Sahu @ Golu is concerned, his involvement is based on memorandum statement (Ex.P/8). From him, motor cycle is said to have been recovered. Though in the memorandum statement, it has come that the child was taken on motor cycle to Belbehra, recovery of motor cycle is not proved and the manner in which the two memorandum witnesses i.e. Vishwanath Gupta (PW7) and Ashok Kesharwani (PW13) has been stated, that could not be made a basis to prove beyond reasonable doubt that Shanker Sahu is involved in the alleged offence. Thus, there is no corroborative evidence against Shanker to support the doubtful identification by kidnapped child – Ansh Kesharwani (PW14). Even Harsh Namdev (PW6) has not identified him.

17. As far as Rakesh Kumar Singh is concerned, we find that there is no corroborative evidence to lay credence to the doubtful identification of Rakesh by the child – Ansh Kesharwani (PW14) because when the prosecution has come out with a case that Rakesh had taken the kidnapped child to the house of Ratilal, Ratilal at the outset, denied kidnapping. His two sons i.e. Santlal (PW8) and Basant Lal (PW10) though in their cross-examination have stated regarding child taken to their house but

they have not involved Rakesh and from their statement, it has not been proved that Rakesh had brought Nikhil to the house of Ratilal. At the time of recovery of the child, presence of Rakesh was not there. Therefore, case against Rakesh Kumar Singh also becomes doubtful.

18. Having so examined, we consider it necessary at this stage, to examine whether the prosecution has proved commission of offence under Section 364-A of IPC i.e. Kidnapping for ransom. The relevant provision is quoted as below -

“364-A. 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.”

The aforesaid provision was interpreted by this Court in a recent decision in the case of **Raja @ Jai Sharma and anr. v. State of Chhattisgarh** (Cr.A.No.812/2016) wherein after close scrutiny, this Court dealt with the aforesaid provision as below -

“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.”

19. Therefore, in order to make out a case of kidnapping for ransom, three other ingredients i.e. threat to cause death or hurt or conduct giving rise to a reasonable apprehension to put a person to death or hurt is required to be proved. The prosecution has examined the father of the kidnapped child – Deepak Kesharwani (PW1). Deepak Kesharwani in his evidence deposed that after his child went missing, he received a phone call from an unknown number stating that his child is with him and he was asked to arrange Rs.20 lakhs. His evidence is that the said unknown person warned him over phone that if he discloses it to anybody, his child would be killed. On this, the learned Trial Court has convicted the appellants for commission of offence under Section 364-A IPC. We, however, find that the element of threat to cause hurt or murder or death is quite shaky and not proved beyond reasonable doubt. At the first place, the threat or hurt or causing death is not stated in the missing report or in the FIR (Ex.P/1 and Ex.P/2) respectively. It is important to notice that Deepak Kesharwani has admitted in his cross-examination that even before lodging of missing report, he had already received phone call. If that be so, we do not find that

any mention regarding extending threat to kill his son was there while lodging report and FIR. Moreover, from the evidence of Sajjad Khan (PW5), Ibrahim Mohammed Quirashi (PW9) and Rahul Kesharwani (PW11) also, we find that these witnesses do not support with regard to extending threat of murder of kidnapped child. These persons were present at the time when Deepak Kesharwani was receiving call from the unknown number and unknown person. These witnesses do not support the prosecution case and the evidence of Deepak Kesharwani that any threat of murder of the child was given. We also do not find from any evidence of the prosecution that when the child was kidnapped or kept in the house, any hurt was caused or attempt was made to kill the child. The kidnapped child witness (PW14) has also not whispered anywhere in his evidence that any threat of life was given to him or he was assaulted or that the persons who kidnapped him had committed any overt act giving rise to apprehension that he may be subjected to hurt or death. Therefore, the element of causing hurt or death or giving threat or doing any act or any conduct which would give reasonable apprehension of putting a kidnapped person to death or hurt is absent.

20. In the absence of cogent evidence in that regard, we hold that essential ingredients of offence under Section 364-A of IPC have not been proved beyond reasonable doubt by the prosecution so as to warrant imposition of life imprisonment. Punishment for commission of offence under Section 364-A is either death sentence or life imprisonment. Therefore, the prosecution should have proved each of the ingredients of Section 364-A IPC beyond reasonable doubt by leading clinching and reliable evidence.

21. In the result, appeal of **Ramu Kori, Shanker Sahu and Rakesh Kumar Singh** are allowed. Their conviction is set aside. As these three appellants are already on bail and they have also been acquitted, their bail bonds stands discharged.

As far as **Ashish @ Rinku and Nikhil @ Chhotu** are concerned, their conviction is altered to that under Section 363 IPC and they are sentenced for seven years for the alleged commission of offence. The appeals of these two appellants are accordingly partly allowed in the manner as described above.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Sd/-

(Rajani Dubey)
Judge