

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

1. CRA-D-1040-DB of 2011 (O&M)
Date of Decision: 22nd Nov. 2019
Naim KhanAppellant

Vs.

State of HaryanaRespondent

2. CRA-D-1196-DB of 2011 (O&M)
Raju @ Raj KumarAppellant

Vs.

State of HaryanaRespondent

3. CRA-D-1012-DB of 2011 (O&M)
AfjalAppellant

Vs.

State of HaryanaRespondent

4. CRA-D-70-DB of 2012 (O&M)
Arvind and anotherAppellants

Vs.

State of HaryanaRespondent

**CORAM: HON'BLE MR. JUSTICE AJAY TEWARI
HON'BLE MR. JUSTICE HARNARESH SINGH GILL**

**Present:- Mr. B.S.Saroha, Advocate
for the appellant (CRA-D-1040-DB-2011).**

Mr. Manoj Sood, Advocate
for the appellant (in CRA-D-1196-DB-2011).

Mr. Salil Bali, Advocate
for the appellant (CRA-D-1012-DB-2011).

Mr. D.S.Brar, Advocate
for appellant No. 1 (CRA-D-70-DB-2012).

Mr. Arun Bakshi, Advocate
Legal Aid Counsel for appellant No. 2
(CRA-D-70-DB-2012).

Ms. Tanisha Peshawaria, D.A.G., Haryana.

HARNARESH SINGH GILL, J.

We are dealing with the above mentioned four criminal appeals arising out of the judgment of conviction dated 29.8.2011 and order of sentence dated 6.9.2011, vide which the appellants were convicted under Sections 395 & 364-A IPC in FIR No. 157 dated 26.4.2009 registered at Police Station NIT, Faridabad and were sentenced to undergo rigorous imprisonment for a period of 07 years and to pay a fine of Rs. 2,000/- each under Section 395 IPC and, in default of payment of fine, to further undergo rigorous imprisonment for six months. They were further sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs. 5,000/- each under Section 364-A IPC and, in default of payment of fine, to further undergo rigorous imprisonment for two years.

2. In the present case, complainant-Shalini gave a complaint to the police, which reads as under:-

“I Shalini w/o Mr. Manoj Adhlakha R/o House No. 207, Sec. 21-A, Faridabad. I am a housewife. My husband is not living in India, he is working in Jeddah. Today at around 10 O' clock when I was present at home with my mother-in-law and three children our two sons Manan and Mohit and daughter Kareena 9 years old, suddenly 3 young boys with face covered entered the house and kidnapped my

daughter Kareena Adlakha. We started shouting. They put a knife at our neck and took money from the house. They have demanded money to release our daughter. Please take whatever legal action required to rescue our daughter.”

3. This application was given by complainant on 26.4.2009 and the police started investigation and the appellants were arrested. Appellants Raju and Karan were arrested on 28.4.2009, appellant Naim Khan was arrested on 30.4.2009, whereas appellants Arvind and Afjal were arrested on 5.5.2009.

4. In the present case, the occurrence took place on 26.4.2009 at 11.30 P.M. and daughter of the complainant, namely, Kareena Adlakha, was kidnapped after the appellants with muffled faces, entered the house of the complainant and also took away cash and jewellery by putting a knife on the neck of the complainant. There was a demand of ransom for the release of 9 year old girl, Kareena.

5. After completion of the investigation and necessary formalities, challan was presented. Vide order dated 13.8.2009, the case was committed to the Sessions Court.

6. Vide order dated 16.9.2009, charge was framed against the appellants under Sections 395 read with Sections 397 and 364-A IPC to which they pleaded not guilty and claimed trial.

7. In order to prove its case, the prosecution had examined as many as 14 witnesses.

8. Complainant-Shalini, while appearing in the witness box as PW-8 stated that three boys with half muffled faces, had entered their house and two of them had been having knives. This witness had identified them as Naim Khan, Afjal and Raju in Court. She further stated that they had

taken away cash of Rs. 20,000/- and a diamond ring lying in the almirah. As per PW-8, the aforesaid persons had taken her daughter Kareena along and asked her to pay Rs. 10 lacs for release of her daughter. She further stated that appellants Arvind and Karan Singh had been present in a Maruti Alto Car and she had known appellant-Arvind as he had served as a Driver of their neighbour, namely, Mr. Pilley. She further deposed that after about 10 minutes, they had received a telephonic call on the mobile phone of her mother-in-law, namely Sarla (PW-11) and the caller had demanded a ransom of Rs. 10 lacs to release Kareena and further told that if the ransom was not paid, they would kill Kareena. The call was made from the mobile phone which had been taken away from them.

9. PW-8 further stated that the police upon having been informed about the incident had instructed that if any call was received by them, then they should say that they were ready to pay the ransom. After receiving another call from the appellants, SHO, Police Station NIT, Faridabad had been informed. He accompanied them in civil dress as the complainant was asked to reach Ashram Bridge, Delhi and when they reached Ashram Bridge, Delhi at 3.00 A.M., they had been asked to reach Noida Express Highway, near Pari Chowk. But on way, the complainant had received another call that since the police were with them, thus, they would not release her daughter and would kill her and asked her to go back (home). On 27.4.2009, at about 10.00 A.M., the appellants made another call and asked them to send driver Mohammad Salim with Rs. 10 lacs. They had given Rs. 10 lacs and mobile phone number of some police official to him and at about 3.30/4.00 P.M., the complainant had received a phone call from the police that Kareena had been recovered from Sohna-Taru road but the amount of Rs. 10 lacs had been taken by the appellants.

10. As per PW-12 Mohammad Salim, after taking money from Shalini, he went in Baleno car and when he had received phone call from the appellants, he had informed the police and as per instructions from the caller, he went to Sohna Road and kept the money under a tree near the hills, but the phone was not disconnected. He was asked to leave the place, as the phone was still not disconnected. They took the bag and left Kareena. He went back and asked the girl to sit in the car. After sometime, the police, Shalini and Mr. Sanjay Kochar-maternal uncle of Kareena, had also reached there. The said witness also identified appellants Arvind and Afjal in Court, but could not identify the other appellants.

11. Another important witness is PW-9 Kareena (victim), who stated that appellants had taken her in a car where two persons were present and she had known one of them i.e. Arvind. This witness had identified appellants Arvind and Raju, but could not identify the other appellants. She further stated that after lifting money bag, the appellants had left her there and she had been brought back by their driver and during that period, the appellants had taken her in a garden behind their Sector. One of the appellants had remained with her in the car whereas, the other three had gone out of the car.

12. Still further, Sarla (PW-11) grandmother of Kareena (Victim) had also identified appellants Afjal and Arvind in Court.

13. PW-13 SI Bharatender had arranged I.D. caller on the land-line telephone of the complainant installed at her house. This witness had accompanied the complainant in civil dress. After sometime, the appellants had called the complainant that there were police vehicles accompanying her and the complainant was directed to go back to Faridabad and was told that further course of action would be informed later. In cross-examination

PW-13 stated that the driver of the complainant had left her house at 11.00 A.M. along with Rs. 10.00 lakhs. None of the police officers made any endorsement on the currency notes. The ransom amount was arranged on 27.4.2009 from the FDR of Sarla (PW-11) lying with HDFC Bank. As the complainant did not want to take risk and since it was a secret operation, Saha police was informed after the recovery of the victim. This witness further stated in the cross-examination that on 28.4.2009, he had received information from police control room that the appellants were in police custody of police post Ankhir. Accordingly, he went to police post Ankhir and met appellants Karan and Raju. They were joined in the investigation and were interrogated. Appellants Karan and Raju had got recorded their disclosure statements Ex. P-4 and Ex. P-5, respectively. He further stated that appellants Arvind and Afzal had been arrested from B.K.Hospital as they had suffered bullet injuries. He further stated that on interrogation, appellants Karan and Raju had again suffered disclosure statements Ex. P-5 and Ex. P-7 respectively, and pursuant to the disclosure statement suffered by appellant Raju, he got recovered cash of Rs. 5,000/- and one knife from the bushes. The amount as well as the knife were converted into a sealed parcel and the same was sealed with seal bearing impression 'DS' and was taken into possession vide recovery memo Ex. P8. Appellant Karan had also got recovered Rs. 5,000/- from a room of his house and the same was taken into possession vide recovery memo Ex. P-10. On 29.4.2009, appellant Naim Khan was arrested from his house and during interrogation, he had suffered a disclosure statement Ex. P14 and got recovered the diamond ring belonging to the grandmother of Kareena, namely Sarla and the same was taken into possession vide memo Ex. P-15. Furthermore, the cash of Rs. 10 lacs was recovered from the appellants in FIR No. 158 of 2009 registered at

P.S. Suraj Kund.

14. PW-4 Dr. S.K.Ahlawat tendered into evidence his affidavit Ex.P-20 wherein he deposed that on 27.4.2009, he had medico-legally examined appellant Arvind and found an oval shaped wound over right lower leg, just below the knee joint anteriorly, margins were inverted, rounded wound over right lower leg posterior aspect margins were everted. The injury was kept under observation for which X-ray and surgeon's/Orthos Surgeon's opinion and management was advised.

15. He further deposed that on the same day, he had also medico-legally examined Afjal and found following injuries on his person:-

1. A round small wound over right lower thigh region anteriorly, margins were inverted with an oval shaped wound of size 2.5" x 1.5" over right thigh posterior lateral aspect, bleeding was present, thigh was deformed, moments were painful. The injury was kept under observation for which x-ray and surgeon's/Orthos Surgeon's opinion and management was advised.

2. Reddish contusion over right side of face below eye the injury was declared as simple in nature caused by a blunt weapon with probable duration within six hours.

He had proved MLRs of appellants Arvind and Afjal as Ex. P-21 and P-22, respectively.

16. PW-6 Sanjay Kumar deposed that he was the owner of Alto car No. HR-51-V-9007 and appellant Arvind, who was his relative, had taken the said car to attend a marriage at Palwal on 26.4.2009 at 6.00/7.00 P.M. He further deposed that on the next day he had come to know that the appellant had been involved in a criminal case.

17. The learned Additional Sessions Judge vide judgment dated 29.8.2011 and order dated 6.9.2011, ordered the conviction and sentence of the appellants as noticed above. Hence, the presents appeal by the appellants.

18. We have heard the learned counsel for the appellants as well as the learned State counsel and with their able assistance, have gone through the record of the case very minutely.

19. Minor girl Kareena, aged 9 years, a student of 4th class was sitting with her two brothers and watching television at 10.00 P.M. on 26.4.2009 along with their mother and grandmother in the house, when three boys with half muffled faces, two with knives, had entered their house disclosing their names as Naim Khan, Afjal and Raju. They had taken her along for ransom besides taking cash, jewellery and mobile phones lying in the house. On hearing the cries of complainant Shalini (PW-8) mother of Kareena, the neighbours came and police was immediately informed. Appellants had demanded Rs. 10 lacs. As the complainant did not want to risk the life of her minor daughter, she had accepted the demand for paying ransom. At one point of time, the appellants/kidnappers came to know that the police was accompanying the complainant which is why they directed her to go back to Faridabad and would call later. On 27.4.2009 i.e. the next day, in the morning, the complainant again received a ransom call. After arranging the money, driver Mohammad Shalim (PW-12) was sent with Rs. 10 lacs. On the directions of the kidnappers, a bag containing money was kept at a designated place and the driver was asked to leave the place. It is a case where after taking the ransom money, Kareena was released by the appellants from their illegal confinement .

20. Baby Kareena (victim) had identified appellants Arvind and Raju in Court while appearing as PW-9. Similarly Sarla (grandmother of Kareena) had also recognized Afjal and Arvind in Court, as earlier Arvind was serving as a driver in the neighbourhood and on the same footings driver Mohammad Salim had recognized appellants Arvind and Afjal. The

appellants had also given threats to the complainant (PW-8) that if ransom money was not paid, they would kill Kareena. Thus, without wasting any time, the family had withdrawn Rs. 10 lacs from the Bank and paid the ransom money in order to get Kareena released from the clutches of the appellants.

21. The appellants were intercepted later at police post Ankhir and during that process, gun shots were fired and appellants Afjal and Arvind had suffered bullet injuries and were arrested from B.K.Hospital. On the disclosure statements of the appellants, all the material including knives, diamond ring, stolen cash and the ransom amount were recovered and a separate FIR No. 158 of 2009 was registered at P.S. Suraj Kund.

22. We believe the evidence of baby Kareena. In the present case, Shalini and her mother-in-law Sarla had acted in very swift manner to get their child released after giving Rs. 10 lacs as ransom money. Recovery of ransom notes is sufficient enough even though the notes were not marked as there was no time with the complainant or the police agency to mark the notes as there was dagger hanging on their head because the appellants were giving regular threats to kill baby Kareena. To our mind, recovery of diamond ring from Naim Khan, belonging to Sarla also seals his fate. Moreover, these two ladies had no ill-will against the appellants and they took firm steps to punish the actual culprits.

23. In this case, we find the evidence against Raju @ Raj Kumar, Arvind and Naim Khan as trustworthy and no loose end are found in the prosecution evidence against these appellants, for having kidnapped the minor girl for ransom. There being no adult male member in the family at that time, the two ladies i.e. mother of Kareena i.e. Shalini (PW-8) and grandmother Sarla (PW-11) had proved the guilt of Raju @ Raj Kumar,

Arvind and Naim Khan without any reasonable doubt.

24. The Supreme Court in Shyam Babu & Others Vs. State of Haryana, (2008)15 SCC 418 while dealing with the issue of kidnapping for ransom has held that the testimony of the mother, who had seen the accused persons, kidnapping the minor child, was good enough to bring home the guilt of the accused. It was held as under:-

“5. It must be noted that the lady had an opportunity to see the accused persons in broad day light. She was all along with accused persons for considerable time. She was not only overpowered, but was also injured which injuries were also got proved by the prosecution. In fact, the presence of those injuries very materially corroborated the story told by the witness Bhawna. Lastly, she was the mother and in her own presence, the child was forcibly taken away by the accused person.”

While upholding the conviction of the accused under Section 364-A IPC and sentence imposed upon them, it was held as under:-

“9. Shri Kush, Learned Counsel concentrated on the nature of the offence. According to him, the ingredients of Section 364A IPC were not proved in this case and at the most, the conviction could be under Section 364. Section 363 deals with the punishment for kidnapping, which offence is defined in Section 359. The punishment is seven years. Section 364 provides for kidnapping or abducting in order to murder, while Section 364-A deals with kidnapping for ransom. The wording is as under:-

"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 organization 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 wording itself suggests that when kidnapping is done with the threat to cause death or hurt to the kidnapped person or gives a reasonable apprehension that some person may be done to death or hurt or compels any Government, any foreign State or international inter-governmental organization or any person to pay a ransom, the offence is complete. Here was a case, where the accused persons in a daring day light bid kidnapped a child, right in the presence of his mother and caused hurt to her, which was in the nature of grievous hurt and on the top of it, demanded a ransom of 5 lacs of rupees in writing for the life of the child. We have gone through the original note Exh. PD, which clearly brings out the threat to the life of the child in case the ransom money is not paid. In our considered opinion, there would be no other offence, but the one under Section 364A. The ransom note is proved to be in handwriting of A-4 Chander Bhan and it was not an individual act of Chander Bhan, but as many as 3 appellants, who were together in whisking away the child from his mother. A-5 Tejpal must be presumed to have the idea, because he immediately and knowingly joined the bandwagon. It is, therefore, clear that all the accused persons have, undoubtedly, committed the offence under Section 364A and the Courts below were right in convicting them for the offence, as also awarding them the life imprisonment for the same. We find no merit in the Appeal. The Appeal is dismissed."

25. In Vinod Vs. State of Haryana, (2008)2 SCC 246, the Apex Court, held that the there is an alarming rise in kidnapping of the young children for ransom and the legislature in its wisdom has rightly provided the stringent punishment for the said offence. A perusal of the said judgment would show that the factual matrix of the said case is somewhat

similar to the present case. In the said case also, a 9 years old child was kidnapped for ransom and was released only after the ransom of Rs.10 lacs had been paid. While upholding the life imprisonment imposed upon the accused therein, the Apex Court held as under:-

“16. Abduction is defined in Section 362. The provision envisages two types of abduction i.e. (1) by force or by compulsion; and/or (2) inducement by deceitful means. The object of such compulsion or inducement must be the going of the victim from any place. The case at hand falls in the second category.

17. To Induce means to lead into. Deceit according to its plain dictionary meaning signifies anything intended to mislead another. It is a matter of intention and even if promise held out by the accused was fulfilled by him, the question is: whether he was acting in a bonafide manner?

18. The offence of abduction is a continuing offence. This Section was amended in 1992 by Act XLII of 1993 with effect from 22.5.1993 and it was subsequently amended in 1995 by Act XXIV of 1995 with effect from 26.5.1995. The Section provides punishment for kidnapping, abduction or detaining for ransom.

19. To attract the provisions of Section 364-A what is required to be proved is (1) that the accused kidnapped or abducted the person; and (2) kept him under detention after such kidnapping and abduction; and (3) that the kidnapping or abduction was for ransom.

20. To pay a ransom as per Black's Law Dictionary means to pay price or demand for ransom. The word demand means to claim as one's due; to require; to ask relief; to summon; to call in Court; An imperative request preferred by one person to another requiring the latter to do or yield something or to abstain from some act; An asking with authority, claiming. The definition as pointed out above would show that the de-

mand has to be communicated. It is an imperative request or a claim made.

21. When the evidence on record is analysed in the background of Section 364-A IPC, the inevitable conclusion is that the prosecution has clearly established commission of the said offence. Considering the alarming rise in kidnapping young children for ransom, the legislature has in its wisdom provided for stringent sentence. Therefore, the High Court rightly refused to interfere in the matter. In our view, the impugned judgment of the High Court does not suffer from any infirmity to warrant interference. The appeal fails and is dismissed.”

26. On the other hand, there is a hearsay evidence against appellants Karan and Afzal and we are inclined to give them benefit of doubt as these two appellants have not been identified by the prosecution witnesses.

27. Hence, the appeals filed by appellants Afjal and Karan Singh are allowed. The impugned judgment of conviction dated 29.8.2011 and order of sentence dated 6.9.2011, qua appellants Karan Singh and Afzal, are set aside. Both the appellants are ordered to be set free.

28. The appeals filed by appellants Naim Khan, Raju @ Raju Kumar and Arvind are dismissed.

29. Since the main appeals have been decided, the pending CRMs, if any, also stand disposed of.

(HARNARESH SINGH GILL)
JUDGE

(AJAY TEWARI)
JUDGE

22nd November, 2019
Gurpreet

Whether speaking /reasoned
Whether Reportable

: Yes/No
: Yes/No