

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

Date of Decision: 24.09.2019

1. CRA-D-452-DB of 2013 (O&M)

Jaskaran Singh and anotherAppellants

Vs.

State of PunjabRespondent

2. CRA-D-541-DB of 2013

Lakhpreet SinghAppellant

Vs.

State of PunjabRespondent

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

Present:- Mr. Sandeep Verma, Advocate
for the appellants (CRA-D-452-DB-2013).

Mr. G.S.Brar, Advocate
for the appellant (in CRA-D-541-DB-2013).

Mr. Sandeep Vermani, Addl. A.G., Punjab and
Mr. H.S.Sullar, DAG, Punjab.

AJAY TEWARI, J. (ORAL)

1. These appeals have been filed by appellants, namely, Jaskaran Singh, Daroga Singh and Lakhpreet Singh against their conviction and sentence under Section 364-A IPC in case FIR No. 160 dated 06.8.2007 registered at Police Station City Muktsar. Vide judgement and order dated 27.02.2013 the appellants were convicted under Section 364-A IPC and were sentenced to undergo life imprisonment, and to pay a fine of

Rs.5,000/- each, in default of payment of fine to further undergo R.I. for six months each.

2. As per the allegations, on 3.8.2007, the son of the complainant, aged about 10 years, had gone to school at 7.30 A.M. At 9.00 A.M., his wife had sent appellant-Lakhpreet Singh (who was her nephew and had been staying at their house for the last 10-15 days) to the school to deliver the lunch box to the child. He came back and informed her that the child had not reached the school. She informed the complainant who was working as a Home Guard at that time and was deputed in Police Station, City Muktsar. The complainant then lodged a missing person report in the police station on the same day. On the next day i.e. 4.8.2007, he received a call wherein he was informed that the child was in the custody of the caller and that the caller would call him on the next day. However, no phone call was received on 5.8.2007. On 6.8.2007, the complainant got three or four calls between 5.30 A.M. To 6.30 A.M. from telephone No. 99153-60696 and he was asked to pay Rs. 70,000/- in a bag which would be found hanging on a *jand* tree near Gaushala at village Husnar road. The complainant then informed the police. Currency notes of Rs.2,800/- in the denomination of Rs.100/- each, were taken from the complainant and seven bundles were prepared in which two notes at the top and two notes at the bottom were the genuine notes and the remaining 96 dummy were notes. Three police parties were formed which spread out in the vicinity of Gaushala at the appointed time. Appellant-Lakhpreet Singh was seen coming. He took up the bag and tried to run but was overpowered by PW-2 Sub Inspector Jarnail Singh. He informed the police that the child had been kept in an abandoned brick-kiln

situated near village Husnar. The police immediately reached there and was able to free the child from the custody of the co-convicts (appellants in CRA-D-452-DB-2013).

3. The appellants were sent up for trial and having been convicted and sentenced as mentioned above they filed the present appeals before us.

4. In evidence, the complainant and Sub Inspector Jarnail Singh were the two main witnesses and on the basis of their testimony, the conviction was recorded.

5. Learned counsel for the appellants have argued that this is a clear case of false implication. It is their assertion that the police never even bothered to check if the child had reached the school on the fateful day or had been marked absent. They have further argued that no attempt was made to ascertain the ownership of phone No. 99153-60696. They have further argued that DSP Baljeet Singh, mother of the child and the child did not appear as a witness. Moreover, the alleged independent witness Dhir Singh, who had signed all the recovery memos etc., was not examined by the prosecution. The thesis that they have propounded is that actually the complainant and his wife had differences because the latter was having affair with appellant Jaskaran Singh and this false case has been foisted only as a measure of vengeance against the wife.

6. Learned Deputy Advocate General, on the other hand, has argued that the conduct of the complainant and the police cannot be termed as unnatural in any manner. As soon as the father came to know about the fact that his child was missing, he lodged a missing person report but then like any other parent he was trying to locate the child himself. He has

further argued that on the next day also, he was making efforts to trace the child and when he got a ransom call on 6.8.2007, he immediately informed the police. As per him, even the action of the police is natural and normal because on 3.8.2007, there was only a missing person report and, like the father, the police was not unjustified in thinking that the child may have strayed somewhere and may be recovered but when the father got a ransom call, the police immediately swung into action and in those circumstances, their omission to check the attendance of the child in the school on 3.8.2007 can hardly be pointed out as a doubt which may entitle the appellants to acquittal. He has further argued that during the cross-examination, the suggestion given to the complainant was that at least on 3rd, 4th and 5th of August, his wife was with him and further no suggestion was given to him that the phone No. 99153-60696 was not recovered from appellant Jaskaran Singh or that appellant Jaskaran Singh had a liaison with his wife or that the wife was not staying with him at that time.

7. In our opinion, the arguments of learned Deputy Advocate General carry more weight. It goes without saying that if the appellants had been able to point out any possibility also that the wife of the complainant had a liaison with appellant Jaskaran Singh and that there were differences between them, it would have been a different thing but if no foundation for that was laid in the cross-examination nor any evidence was led to that effect, this farfetched theory cannot be accepted and if that is so, then the whole case of the prosecution hangs together. It is pointed out that no cross-examination was conducted either on the complainant or on SI Jarnail Singh that phone No.99153-60696 was in fact not recovered from appellant

Jaskaran Singh.

8. On the last date following contention was noticed :-

*“Counsel for the appellants has relied upon some judgments including the judgement of the Delhi High Court in the matter of **Chotey Khan vs. State, decided on July 02, 2009** to argue that in this case the ingredients of Section 364-A IPC are not made out because no evidence was led that while demanding ransom a threat to cause injury or harm or to cause death of the child kidnapped was made.”*

9. The matter was fixed for today i.e. 24.9.2019 to hear the learned counsel for the appellant(s) on the question of sentence. He has argued that case under Section 364-A IPC is not made out and only case under Section 365 IPC is made out. At the most even if it is assumed that the prosecution witnesses are to be believed, then also only a case under Section 365 IPC is made out. It is his argument that as per the testimony of the father PW-1, the first ransom call had been received on 4.8.2007 and the witness nowhere stated that there was any threat to the life or injury to the child and he only deposed that on 6.8.2007 a threat was held out. It is his submission that this testimony is not enough to give rise to conviction under Section 364-A IPC. He has relied upon **Chotey Khan Vs. State, CRL.A.29/2001** decided by the Division Bench of Delhi High Court on **July 02, 2009**. The relevant part of that judgment is quoted herein below :-

“8. We have perused the testimony of PW-2. He is the sole witness of the prosecution who has deposed two facts pertaining to ransom call being received. Indeed, he has not deposed that when ransom call was received it was coupled with any threat of causing injury to or causing the death of the child kidnapped. We further find that in his deposition, PW-2

has not deposed of anything stated to him which gave rise to a reasonable apprehension in his mind that the kidnapped child would be hurt or put to death.”

10. In the present case, we have gone through the testimony of PW-1 wherein he stated as follows :-

“On 6.8.2007 at about 5.30 a.m. a phone call was received on my mobile phone No.9915367 again said 99153-67385. The caller stated that I was to come present at 9.00 a.m. with Rs.70000/- in cash on the bus stand of village Husner. The caller threatened me if the police is informed by me, I will lose my son.....

11. Even in the cross examination in reply to the following suggestions, put to him the witness had deposed to the following effect :-

“It is incorrect to suggest that no child was kidnapped nor any amount was demanded. It is incorrect to suggest that I concocted a false story and lodged a false FIR. It is incorrect to suggest that I am police official and police helped me to register a false case.....

It is incorrect to suggest that I have deposed falsely.”

12. In our considered opinion, the argument raised by the learned counsel for the appellant(s) can not be accepted. The witness categorically stated that he was told that in case the police was informed, he would lose his son.

13. In the circumstances, the case does not fall within the parameters of ***Chotey Khan (supra)***.

14. Resultantly, we reject the plea that Section 364-A IPC is not applicable to the present case.

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15. Both the appeals stand dismissed.
16. Since the main cases have been dismissed, the pending C.R.M. Application, if any, also stand disposed of.

(AJAY TEWARI)
JUDGE

(HARNARESH SINGH GILL)
JUDGE

September 24, 2019
pooja sharma-I

Whether speaking /reasoned : Yes/No

Whether Reportable : Yes/No