

respect to the kidnapping of Sambhav and dacoity in House No.MD-4 Eldeco Mansion, Sohna Road, Gurugram, was received in the police station through control room. On receipt of the information, Inspector Sajjan Kumar along with other police officials visited at the spot, where complainant-Bhavishya Sharma made a complaint stating therein that he was resident of the aforesaid house. He had gone to his office for work, whereas his wife Shipra and son Sambhav were present at home. 3-4 days back, they had hired a maidservant namely Pooja. On 23.04.2013, at about 3.15 P.M., he (complainant) was informed by someone in the society that his maid, along with her accomplice, had attacked upon his wife and beat her. They tied his wife with an electric wire and locked her in the bathroom. Thereafter, they kidnapped his son. While leaving the house, they also took away two diamond rings, a gold ring, a silver ring, a wallet containing Rs.3000/4000 approximately and his car bearing registration No. HR-26-BT-3803.

On the basis of complaint made by complainant Bhavishya Sharma, FIR No.236 dated 23.04.2013, under Sections 364-A, 394, 452/34 IPC was registered at Police Station, Sadar, Gurgaon. During investigation, accused-appellants were arrested. On completion of investigation, report under Section 173 Cr.P.C. was prepared and presented in the Court of Illaqa Magistrate. Copies of challan and other documents were supplied to the accused-appellants free of costs, as envisaged under Section 207 Cr.P.C. Vide order dated 03.07.2013, Illaqa Magistrate committed the case to the Court of Sessions.

Thereafter, finding a prima facie case, charge under Sections 394, 364-A, 452 read with Section 34 IPC was framed against the accused-

appellants, to which, they pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined Constable Suraj Kumar (PW-1), PSI Virender (PW-2), Shipra Sharma (PW-3), Bhavishya Sharma, complainant (PW-4), Dr. Yogender, Medical Officer (PW-5), ASI Ashwani Kumar (PW-6), Naresh Kumar, Draftsman (PW-7), SI Rani Devi (PW-8), Inspector Sajjan Kumar (PW-9), SI Kanwar Singh (PW-10), Rahul (PW-11), ASI Ravinder Kumar (PW-12), Inspector Jasbir Singh (PW-13) and Dr. Mohd. Harun (PW-14).

On conclusion of the prosecution evidence, statements of the accused under Section 313 Cr. P.C. were recorded, wherein entire incriminating evidence was put to them. However, they denied the same and pleaded false implication in the case. No evidence was led in defence.

Trial Court, after going through the evidence led by the prosecution, convicted and sentenced accused-appellants as stated above. Conviction of accused-appellants was based on the testimony of Shipra Sharma, who appeared in the witness box as PW-3 and reiterated the entire version given by her husband in the FIR. She identified the accused Devi Lal, who was present in Court. She stated that both the accused kidnapped her son and took him in their (complainant's) I-10 car. She got freed herself and ran towards the gate of the society for help. Thereafter, she made a phone call to her husband. They reported the matter to the police. The police rescued her son somewhere near Palwal. In the evening, the police handed over the custody of the child to the family. Bhavishya Sharma-complainant (PW-4) reiterated the version given in the FIR. Dr. Yogender, Medical Officer, General Hospital, Gurgaon, appeared in the witness box as PW-5 and stated that on 24.04.2013, police moved an

application Ex.PG for obtaining the hairs of Pooja for sample. He took the sample, sealed it and handed over to the police. He prepared his report Ex.PG/1. On the same day, police moved another application Ex.PG/2 for obtaining the hairs of accused-Devi Lal for sample. He took the same, handed over to the police and prepared the report Ex.PG/3. He further deposed that as per FSL report Ex.PX, both the hairs were of human origin. Hair samples (Nos. 1 & 3 and 2 & 4) were matching. He also proved the cloth pouches along with hair Ex.P1 and Ex.P2.

SI Rani Devi (PW-8) deposed that on 23.04.2013, she joined the investigation along with Inspector Sajjan Kumar and took into possession one red coloured *chunni*, bed sheet, one electric wire approximately 4 feet long and bunches of hair (long and small) vide memo Ex.PC. She further stated that when Pooja was arrested on 23.04.2013, one purse, two gold rings, mobile phone and some currency notes were found in her possession, which were taken into possession vide memo Ex.PE. During interrogation, accused Pooja also suffered a disclosure statement Ex.PN. Inspector Sajjan Kumar (PW-9) also deposed on the same lines as SI Rani Devi (PW-8). He inspected the place of occurrence and took into possession one *chunni*, one bed sheet, one electric wire and two bunches of hairs (i.e. one bunch of long hairs and the other one of small hairs). Separate parcels were prepared and sealed with the seal 'SK', which were taken into possession vide memo Ex.PC. He also proved on record *chunni* Ex.P8, bed sheet Ex.P9, electric wire Ex.P10, bunch of long hair Ex.P2 and bunch of small hair Ex.P1. He prepared the rough site plan Ex.PP and recorded statements of the witnesses. He contacted Cyber Cell to help for the arrest of the accused. On receipt of the location of mobile phone of accused Pooja, Inspector

Sajjan Singh (PW-9) rushed towards Palwal and with the help of Palwal police, he arrested both the accused namely Pooja and Devi Lal (appellants herein) and recovered kidnapped child-Sambhav from their possession. Memo Ex.PH was prepared in this regard. Upon search, one purse Ex.P3, two gold rings Ex.P4 & Ex.P5, some currency notes and mobile phone Ex.P7 were recovered from the possession of Pooja, which were taken into possession vide memo Ex.PE. One ATM card and diamond ring were found in possession of accused-appellant Devi Lal, which were taken into possession vide memo Ex.PF. Kidnapped child-Sambhav and both the accused were got medically examined. During interrogation, accused Devi Lal suffered a disclosure statement Ex.PJ, pursuant to which, he demarcated the place of occurrence vide memo Ex.PR. The child was handed over to his father vide Ex.PD. Dr. Mohd. Harun (PW-14) medico legally examined Shipra and proved on record MLR Ex.PT.

Learned counsel for the appellants referred to the judgment passed by Hon'ble the Supreme Court in **Shaik Ahmed vs. State of Telangana**, 2021 (3) RCR (Criminal) 421 on the proposition that for conviction under Section 364-A IPC i.e. kidnapping for ransom, it is necessary to prove threat to cause death or harm to the person, who had been kidnapped. In the absence of any evidence with regard to any threat to cause death/harm, nobody can be convicted. Learned counsel states that in the present case, there is no evidence that there was any threat to cause harm to the minor child and in the absence of any direct evidence in this regard, conviction under Section 364-A IPC is liable to be set aside.

For reference, Section 364-A IPC is reproduced as under:-

“364A. 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.”

In *Shaik Ahmed's* case (supra), Hon'ble the Supreme Court has held that essential ingredients to convict an accused under Section 364-A IPC, which are required to be proved by the prosecution, are as under:-

- (i) Kidnapping or abduction of any person or keeping a person in detention after such kidnapping or abduction; and
- (ii) 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;
- (iii) causes hurt or death to such person in order to compel the Government or any foreign State or any Governmental organization or any other person to do or abstain from doing any act or to pay a ransom.

In that case, the accused had kidnapped Prateek Gupta/PW-2 and thereafter, made a call to his father/PW-1 and demanded Rs.2 lakhs to release PW-2. Hence, condition no.1 of kidnapping was proved. With respect to condition no.2, it was observed that PW-1-complainant, in his cross-examination, stated that his son was not physically assaulted. He did not complaint about bad behaviour or assault of anything. His son was kept in a good health and without any kind of problem. The victim-PW-2, who was 13 years of age, was himself examined In his cross-examination, he (PW-2) stated that he was not assaulted or stabbed. He was not given any beating on his body. They (accused in that case) treated him in a good manner. As per the evidence given by the complainant and the victim, IInd ingredient of '**threat to cause death or hurt,**' was not established. Hence,

evidence with respect to Section 364-A IPC had not been proved beyond the

reasonable doubt. Offence of only kidnapping was proved in that case. With these observations, conviction and sentence of the appellant under Section 364-A IPC was set aside and he was convicted for commission of offence under Section 363 IPC. Ultimately, he was sentenced to undergo imprisonment of seven years and to pay a fine of Rs.5000/- for commission of offence under Section 363 IPC.

The trial Court, in the present case, has examined the judgment passed by this Court in **Sandeep Singh vs. State of Punjab**, 2005 (4) Criminal Court Cases 56 (P&H). In that case, there was enmity between the parties and ransom was demanded from the relatives of the victim. Hence, offence under Section 364-A IPC was not made out.

In the case in hand, as per evidence led by the prosecution, the manner, in which the minor child was kidnapped from the house of the complainant, was proved by Shipra Sharma (PW-3), who identified both the accused before the trial Court. Further, the injuries suffered by PW-3 have been duly proved by Dr. Mohd. Haroon (PW-14). As per version given by Shipra Sharma (PW-3), both the accused-appellants had given her fist blows on her face and chest. They punched her repeatedly, threw her on the ground and gave beatings mercilessly. They also pulled her hair and showed an electric wire to strangle her, if she raised the voice. This fact has also been proved by the investigating agency and the child was recovered from Palwal when an accident took place with the car of the complainant. With the kind of injuries inflicted on the mother (PW-3) of the child, reasonable apprehension can be gathered that if, the money was not given to the kidnappers, they could harm the minor child. Hence, in the present case, condition No.ii, as per para 33 of the judgment passed in

Shaik Ahmed's case (supra), is duly fulfilled. The accused-appellants, by giving beatings to Shipra Sharma (PW-3), gave rise to reasonable apprehension that in case the minor child had not been recovered from the car of the complainant, which was taken away by the accused-appellants after the occurrence, there might be threat to cause death or hurt to the minor child. There was no enmity between the parties. Pooja had been employed as maid only 3-4 days back. Before the trial Court, Shipra Sharma (PW-3) had identified accused-Devi Lal, who had come to her house and caused injuries.

In the present case, even benefit of doubt cannot be extended to both the accused-appellants, as their presence at the spot, inflicting injuries to Shipra Sharma (PW-3) and asking her to give money in order to get the child released, have been duly proved on record. There was no delay in reporting the matter to the police. In view of the above discussion, this Court is of the view that the prosecution has duly proved the guilt of the accused-appellants beyond the shadow of any reasonable doubt. On the basis of the oral as well as documentary evidence available on record, the trial Court has rightly convicted and sentenced the accused-appellants. No ground is made out to interfere in the impugned judgment.

Resultantly, finding no merits, present appeal is dismissed.

(RITU BAHRI)
JUDGE

(MEENAKSHI I. MEHTA)
JUDGE

06.12.2021
ajp