

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO.52 OF 2019
WITH
INTERIM APPLICATION NO.782 OF 2022**

Arvindrasingh Shrisatyadevsing Patel	...Appellant
Versus	
The State of Maharashtra	...Respondent

.....
**WITH
CRIMINAL APPEAL NO.1294 OF 2018
WITH
INTERIM APPLICATION NO.1284 OF 2020
WITH
INTERIM APPLICATION NO.1285 OF 2020**

Shivbahadursingh Avdaransingh Patel	Appellant
Versus	
The State of Maharashtra	Respondent

.....

Mr. Nitin Sejpal, Advocate a/w. Akshata Desai, Advocate for the Appellant in Appeal No.52/2019 and for the Applicant in IA/782/2022.

Mr. Satyavrat Joshi, Advocate a/w. Tanvi Tapkire, for the Appellant in Appeal No.1294/2018 and for the Applicant in IA/1284/2020 & IA/1285/2020.

Ms. G.P. Mulekar, APP, for the Respondent-State.

....

**CORAM : S. S. SHINDE AND
SARANG V. KOTWAL, JJ.**

RESERVED ON : 19th APRIL, 2022

PRONOUNCED ON : 2nd MAY, 2022

JUDGMENT : [PER SARANG V. KOTWAL, J.]

1 Both these Appeals arise out of the same Sessions Case challenging the same impugned judgment and order, therefore, are being decided by this common judgment. For the sake of convenience, the Appellants in these Appeals are referred to by their original status in the trial Court wherever necessary.

2 The Appellant in Criminal Appeal No.52/2019 i.e. Arvindersingh Shrisatyadevsing Patel was the original accused No.1 and the Appellant – Shivbahadursingh Avdarsingh Patel in Criminal Appeal No.1294/2018 was the original accused No.2 in Sessions Case No.508/2013. At the conclusion of the trial, the learned Additional Sessions Judge, Pune vide his judgment and order dated 23.3.2018 convicted both the Appellants for commission of offence punishable under Section 364-A read with 34 of IPC. They were sentenced to suffer imprisonment for life and to pay a fine of Rs.1,000/- each and in default to suffer S.I. for 15 days. The Appellants were given set off for the period they had undergone as under-trial prisoners under Section 428 of Cr.PC. There was one more accused i.e. accused No.3 Rajkumarsing Dadansing Patel. He

was acquitted from all the charges faced by him. No information is placed on record to suggest that said acquittal order has been challenged by the State.

3 Heard Shri Nitin Sejpal, learned counsel for the Appellant in Criminal Appeal No.52/2019, Shri Satyavrat Joshi, learned counsel for the Appellant in Criminal Appeal No.1294/2018 and Smt. G.P. Mulekar, learned APP for the State.

4 The prosecution case is that, on 10.2.2013 a boy aged 13 years named Subhash was abducted by the accused from Fursungi, District-Pune. He was taken to Madhya Pradesh. In the meantime, phone calls were made to the father and uncle of the abducted boy for the ransom amount. They were threatened. Subhash's uncle and father approached the police. A trap was laid and on 15.2.2013, the victim was rescued from Satna. At that time he was present with accused No.1 Arvindersingh. Accused No.1 was arrested at the spot. The investigation revealed that other accused including accused No.2 were also involved in the offence. They were also arrested. The investigation was carried out. Charge-sheet was filed. The case was committed to the Court of Sessions.

5 During trial, the prosecution examined six witnesses.

- PW-1 Ashokkumar Singh was father of the victim.
- PW-2 Dr. Vinodkumar Singh was PW-1's brother.
- PW-3 Subhash Singh was the victim himself.
- PW-4 Geeta Singh was the wife of PW-2.
- PW-5 Surendrasingh was the pancha in whose presence the boy was rescued.
- PW-6 API Narayan Pawar was the investigating officer who had gone to Madhya Pradesh.

6 After recording the evidence and the statements of the accused under Section 313 of Cr.P.C., the learned Judge convicted and sentenced the Appellants as mentioned earlier. The defence of the accused was of total denial.

7 Learned counsel Shri Sejpal appearing for accused No.1 Arvindar Singh submitted that, at the highest, it can be a case of mere abduction. The ingredients of Section 364-A are not made out. The offence could be that under Section 363 of IPC, for which the sentence may extend to maximum seven years; or it could be a case punishable under Section 365 of IPC, where also the maximum sentence is seven years.

8 Shri Sejpal further submitted that, on merits, there are too many loop holes in the prosecution case. The call data record is not produced by the prosecution. No police officer from Satna, Madhya Pradesh or any other independent witness from Satna is examined. The accused No.1 Arvindrasingh was a near relative of PW-4 and, therefore, it was not possible that the victim would not have named him. He submitted that the victim i.e. PW-3 has failed to identify the accused No.1 in the Court.

9 Learned Counsel Shri Satyavrat Joshi appearing for accused No.2 Shivbahadursingh also adopted the same arguments. In addition, he submitted that the ransom call was not proved. He submitted that no test identification parade was held to enable the victim to identify the accused. He further submitted that the selection of the panchas is not free from doubt. The procedural aspect for going outside the State of Maharashtra for carrying out the investigation is not proved by the investigating officer.

10 Learned APP, on the other hand, submitted that the statements of the victim, his father and uncle are sufficient to prove the case against the Appellants; particularly when the

accused No.1 was found near the victim when the victim was rescued. The accused No.2 was identified in the Court. The victim had sufficient opportunity to observe the features of accused No.2 and, therefore, absence of test identification parade will not affect the prosecution case. She further submitted that the telephone number in the mobile handset found with the accused No.1 was recorded in the panchnama which matched with the call received for ransom by PWs-1 and 2 and, therefore, there was no necessity to produce C.D.R. on record.

11 We have considered these submissions. PW-1 Ashokkumar singh is the father of the victim. He was working as a ward-boy in the hospital of his brother PW-2 Dr. Vinodkumar. The hospital was at Jejuri. PW-1's son Subhash – the victim was residing with PW-2 Dr. Vinodkumar's family. At the time of incident, Subhash was studying in 8th standard in a school at Hadapsar. Their native place was Basrehi, Taluka-Tevthar, District- Riva, Madhya Pradesh. On 10.2.2013, PW-1 and PW-2 were in the hospital at Jejuri. PW-2's wife informed them on phone that Subhash had gone out for riding bicycle at about 6.00 p.m. to 6.30 p.m. but he

had not returned home. Therefore, she called this witness at about 7.30 p.m.. Both these witnesses returned home at Fursungi. They searched for Subhash but he was not found. Therefore they went to Loni Kalbhor police station and lodged complaint about Subhash's missing from the house. On the next day i.e. on 11.2.2013, at about 8.00 p.m., PW-1 received a phone call on his mobile phone. The caller told him that his son was with the caller. He demanded Rs.3 Lakhs to be paid at Jabalpur and only then PW-1's son would be freed. The caller also threatened him not to disclose it to anyone else. On PW-1's request, the caller allowed PW-1's son to speak to him, but, the son could only say 'hello' before the phone was disconnected. After that PW-1 repeatedly tried to contact the same phone number, but it was switched off. PW-1 informed about this call to the police officers at Loni Kalbhor police station. He gave phone number from which he had received that phone call. On 12.2.2013, at about 12.00 p.m., again he received a phone call asking him whether he was willing to pay the money. After this phone call, PW-1's brother PW-2 went to Jabalpur with the police. While going there, PW-2 carried PW-1's mobile phone with him.

On the next day, PW-2 told him telephonically that the kidnappers had called them to Satna, Madhya Pradesh and on the next day thereafter he received a phone call from PW-2 informing him that Subhash was found at Satna and the police had apprehended the accused who had abducted his son. PW-1 had lodged complaint against unknown persons for abduction. The FIR is produced on record at Exhibit-21.

In the cross-examination, he admitted that there were security guards at the gate of their housing society. He denied the suggestion that he had not given telephone number of the caller making call for ransom to the police.

12 The FIR mentions that it was registered on 14.2.2013 at about 8.15 p.m.. The FIR mentions that he had received a phone call from a mobile phone number “09200194468”. On 12.2.2013 the caller had called from a mobile phone number “09589312229”. The FIR was registered vide C.R. No.106/2013 under Section 364-A at Loni Kalbhor police station, Pune.

13 PW-2 Dr. Vinodkumar Singh is the brother of PW-1. He

was residing in Fursungi with his family and the victim i.e. son of PW-1. He has deposed about Subhash going missing on 10.2.2013 as deposed by PW-1. They had gone to Uruli Devachi police station and had lodged complaint about his missing. The missing report was filed by him and it is produced on record at Exhibit-23. He has deposed that Subhash went missing on 10.2.2013. On the next day, i.e. on 11.2.2013 this report was lodged at about 8.30 p.m. PW-1 received a phone call asking for ransom of Rs.3 Lakhs. He was called to Jabalpur to make the payment. Both of them informed about this phone call to the police officers. The phone number from which the call was received was given to the police. On 12.2.2013 again an unknown caller called PW-1 and demanded Rs.30 Lakhs as ransom. He was called to Jabalpur to pay the money. Even this mobile number was given to the police. The police traced the location of the caller which was in District-Riva, Madhya Pradesh. After that, this witness along with police officer Pawar and two other police went to Jabalpur. PW-2 carried the mobile phone of PW-1. They met the Superintendent of Police at Jabalpur. At that time, again PW-2 received a phone call from an

unknown caller on PW-1's mobile phone. The caller again demanded Rs.30 Lakhs and asked him to come to Jabalpur. This number was also given to police. Then the police traced the location of the caller to District Riva. On the next day also he received a phone call on PW-1's mobile phone from an unknown caller and that time the caller asked him to come to Satna and to bring Rs.30 Lakhs. PW-2 told the caller that he had made arrangement of Rs.10 Lakhs. At his request, the caller allowed him to hear voice of Subhash. At that time, Subhash was crying on the phone. The police again traced the location which was at the same place at Tevthar, District-Riva, Madhya Pradesh. On 14.2.2013, the Superintendent of Police, Satna provided help of local crime branch officers. At about 7.00 p.m. to 8.00 p.m., PW-2 received a phone call from an unknown caller again on the mobile phone of PW-1. PW-2 was asked to come to Satna bus-stand with money. The police officers and PW-2 went to Satna bus-stand. The police officers were in civil dress. When PW-2 reached Satna bus-stand, he again received a call from the unknown caller. At that time PW-2 was told to reach in front of petrol pump by walking.

Accordingly PW-2 went there. He saw that Subhash and two persons were standing there. Those two persons had covered their faces. PW-2 then gave signal to police who rushed there and caught one of the two persons. The other person was successful in escaping. During personal search of the accused who was found there, chilly powder and three mobile phones were recovered. All of them then went to Satna police station. On the information provided by the accused No.1 Arvindrasingh, other two accused were arrested and then PW-2 returned to Pune with Subhash. He identified the accused No.1 as the person who was arrested by the police at the spot.

In the cross-examination, he denied the suggestion that he had close acquaintance with the Superintendent of Police at Satna. He stated that he did not know name of said police officer. He was cross-examined about the location of the spot and surrounding area. However, nothing much of any significance is brought out in his cross-examination. He denied the suggestion that he was deposing falsely. He denied the suggestion that Subhash was not kidnapped but he was in the house of their relatives and

the accused No.1 Arvindrasingh was falsely implicated because of civil dispute with accused No.1's father. PW-2 accepted that accused No.1 is son of his wife's brother. He denied the suggestion that there was dispute between himself and father of Arvindrasingh.

14 PW-4 Geeta Singh was wife of PW-2. She has narrated about the victim Subhash going missing in the evening of 10.2.2013. Rest of her deposition is about the same story narrated by PW-1 and PW-2. Significantly, she was not asked about any dispute between her husband (PW-2) and her brother. She was not asked about her relations with accused No.1.

15 PW-3 Subhash is the main witness. He is the victim himself. He has stated that on 10.2.2013, at about 7.00 p.m., he was riding his bicycle in the campus of his society. He went out of the main gate. One auto-rickshaw stopped near him. There were two passengers. One of them asked him to accompany them for eating pani puri. They walked for some distance. They parked his cycle near one petrol pump and then PW-3 was made to sit in the rickshaw. He to tried to free himself. One of them kept an

article resembling a bomb in his pant's pocket and told him that if he shouted then the bomb would explode. Under that threat, he was taken to a railway station at Pune and then they boarded a train. PW-3 was crying and when the co-passengers enquired about it, those two persons told others that PW-3's mother was ill and, therefore, he was crying. On the next day, they got down at Satna railway station. He was taken to a village by a bus. He was confined in one room. Those two persons then asked for Subhash's father's mobile number which he gave them. One of them made a phone call and demanded ransom amount. The abductor told the victim's father that if he wanted the safety of Subhash then he had to pay Rs.30 Lakhs at Jabalpur. The abductors made one more call in front of PW-3 demanding the money. He was confined in one room. On the next day, he was taken to a field and was kept there and then he was taken to Satna bus stand. At about 7.00 p.m. to 8.00 p.m. the abductors made another phone call and asked his father to come to Satna bus stand. After that, PW-2 went there. He along with the police rescued PW-3 and caught the accused. PW-3 identified accused No.2 Shivbahadursingh, as one of the

persons who had kidnapped him.

In the cross-examination he admitted that there was crowd of passengers on the platform at the railway station. He denied the suggestion that he was deposing falsely about all the details.

16 PW-5 Surendrasingh is another important witness. He was an independent witness and was a pancha in whose presence the victim– PW-3 was rescued. He has deposed that, on 14.2.2013, he was called by the police at Kolgava police station, District Satna. PW-2 was present at the police station, who informed that his nephew was kidnapped from Pune for ransom and that he was called at bus stand along with Rs.30 Lakhs. This witness and the police followed PW-2 to the spot. At about 8.30 p.m. to 9.00 p.m. near the bus stop two persons came along with a boy. Those two persons had covered their faces with handkerchiefs. The police tried to nab them. One of them escaped and one was caught at the spot. The victim PW-3 Subhash was rescued. The person who was caught by the police at the spot gave his name as “Arvind Singh Patel”. On his personal search chilly powder and three mobile

phones were found. Some cash amount was also found. The panchnama was drawn. It was produced on record at Exhibit-36. On 16.2.2013, again this witness was called to the police station and in his presence accused No.1 showed the place where the boy was kept in confinement at village Chilla.

In the cross-examination he admitted that other pancha Chandrajeet was his friend. The village Chilla was 110 Kms from Riva. He denied the suggestion that he was not accompanying the police to Kolgava police station. He denied the suggestion that PW-2 was friend of Chandrajeet Singh's and therefore both of them were deposing in favour of the prosecution.

17 PW-6 API Narayan Pawar was attached to Loni Kalbhor police station. He has deposed about the story given by PW-1 and PW-2. He was given the telephone number of the unknown caller. The police officers then traced the location of the mobile phone of the caller. It was found in District Reva, Madhya Pradesh. On 12.2.2013 he along with PW-2 and other police officers went to Jabalpur. On the way to Jabalpur a phone call was received on the mobile phone of PW-1 from the mobile phone number

“09589312229”. He has deposed about the ransom demand of Rs.30 Lakhs. The location of the caller was traced, which was at the same place in District Reva. They reached Jabalpur on 13.2.2011. They sought help of local police. PW-2 received another call on PW-1’s phone from another phone number. At that time the victim was heard crying loudly. The location of the caller was S.T. bus stand at Theuthor. On 14.2.2013, they reached Satna. On 14.2.2013, PW-2 informed PW-1 about the development and asked him to lodge a FIR. Accordingly the FIR was lodged at Loni Kalbhor police station on 14.2.2013 and the offence was registered as C.R. No.106/2013. This witness then arranged to lay a trap at Satna with the help of local police officers. Then they went to the spot from where the boy was rescued and one of the accused was arrested. He prepared various panchnamas referred to by PW-5. In his cross-examination, nothing much of any significance was elicited.

18 The evidence clearly shows that PW-3 was abducted by two persons from outside his housing colony. He was taken to Madhya Pradesh. He was taken to different places where he was

confined and ultimately he could be rescued only on 14.2.2013. The most incriminating circumstance in this case is about finding of accused No.1 near the victim. Accused No.1 had covered his face with the handkerchief and there was chilly powder and three mobile handsets with him. As pointed by learned APP, the panchnama at Exhibit-36 does mention that mobile phone with sim card bearing No.09589312229 was found in possession of accused No.1. The calls were made from this phone number. This phone number is also reflected in the FIR registered at Loni Kalbhor police station at 8.15 p.m. on 14.2.2013 whereas accused was found at about 8.45 p.m. as deposed by PW-6.

19 There is absolutely no explanation offered by the accused No.1 as to how he was present near the boy. He had covered his face with handkerchief and was carrying chilly powder.

20 As far as the accused No.2 is concerned, he was identified by PW-3 the victim that he was one of the abductors. Though the test identification parade is not held; the victim was in close contact with the abductors from 10.2.2013 to 14.2.2013. Therefore, he had ample opportunity to observe their features. Therefore, his

identification in the Court is sufficient to bring home the guilt of this accused. There is no reason to disbelieve the evidence of the prosecution witnesses and in particular there is no reason to disbelieve PW-2 and PW-3. There was no reason for the prosecution witnesses to involve any of the accused falsely.

21 Though no police officers from Satna, Madhya Pradesh or any other witness from Satna is examined, the prosecution has sufficiently proved this case. The relevant witnesses were examined during the trial and examination of other witnesses was not really necessary.

22 Both learned counsel for the accused relied on the judgment of the Hon'ble Supreme Court in the case of **Shaik Ahmed Vs. State of Telangana**¹ to contend that the conviction in this case cannot be under Section 364-A of IPC. They submitted that all the ingredients of Section 364 of IPC are required to be satisfied and only then the offence under Section 364-A is made out. This judgment does lay down the law that all the ingredients of Section 364-A of IPC were required to be satisfied. In that particular case the accused was acquitted. In that judgment, it was observed that

1 AIR 2021 SC 3062

neither the father of the victim nor the victim had stated that any of the accused had threatened to cause death or hurt. The evidence led before the Court suggested that the victim was not assaulted and he was treated in good manner.

This is in stark contrast with the facts of case in hand before us where every single ingredients of Section 364-A of IPC is made out. There was a call for ransom, there was an apprehension giving rise to the belief that hurt would be caused to Subhash. A direct threat was given to the father of the victim as well as to the victim himself. That threat gave rise to a reasonable apprehension that the victim would be inflicted serious hurt for extracting ransom.

23 Therefore, in the facts of this case, the ingredients of Section 364-A of IPC are clearly made out. Based on this discussion, no case for interference with the impugned judgment and order is made out. The Appeals are, therefore, dismissed.

(SARANG V. KOTWAL, J.)

(S.S. SHINDE, J.)

Deshmane (PS)