

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 895 OF 2018**

Raju @ Rakesh Dhaniram Patel,
Age: 29 years, R/o Bilkharava,
Taluka Patan, District Jabalpur,
(Madhya Pradesh).

... Appellant.

v/s.

The State of Maharashtra
Through In charge of the Upnagar Police
Station, Nashik.
(Crime No. 144/2016.)

... Respondent.

Mr. Vivek Nandkishor Arote, advocate appointed for appellant.

Ms. S.V. Sonawane, APP for State.

**CORAM : SMT. SADHANA S. JADHAV &
PRITHVIRAJ K. CHAVAN, JJ.**

RESERVED ON : FEBRUARY 1, 2022.

PRONOUNCED ON : FEBRUARY 26, 2022.

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JUDGMENT (PER SMT. SADHANA S. JADHAV, J)

1 The appellant is convicted for the offence punishable under section 364-A of the Indian Penal Code and sentenced to suffer imprisonment for life and to pay fine of Rs. 10,000/- i.d. to suffer further R.I. for one year by the learned Additional Sessions Judge, Nashik vide Judgment and Order dated 21st August, 2017 in Sessions

Case No. 191 of 2016. The appellant is also convicted for the offence punishable under section 363 of the Indian Penal Code, but no separate sentence is awarded. Hence, this appeal.

2 Such of the facts necessary for decision of this appeal are as follows:

(i) On 10th April, 2016 one Sampat Baban Porje(P.W.1) lodged report at Upnagar Police station alleging therein that on 9/4/2016 at about 6.30 p.m. he was informed by his mother Tarabai that their servant Raju and his friend Ramkisan had taken his son Prasad aged 5 and half year old to buy chocolate and have not returned for long time. Hence, the complainant has searched for his son, but could not find him anywhere and therefore, he was constrained to lodge a report. It is stated in the FIR that he has also searched for Raju and Ramkisan. That on the basis of the said report, Crime No. 144 of 2016 for the offence punishable under section 363 read with 34 of the Indian Penal Code.

(ii) After competition of investigation the charge sheet was filed on 13/6/2016.

3 At the trial, the prosecution examined as many as 7 witness

to bring home the guilt of the accused. The prosecution has placed implicit reliance on the following witnesses :

- (i) P.W.1 Sampat Porje is the complainant.
- (ii) P.W. 5 Danaji Porje, the elder brother of the complainant.
- (iii) P.W.6 Vijay Davange, the maternal cousin of the complainant.
- (iv) P.W. 7 Nivant Jadhav, the PSI, Upnagar Police Station Nashik.

4 According to P.W. 1, the accused No. 1 was working in his cattle shed for milching his cattle, whereas the accused No. 2 Ramkisan was doing the same work with Vilas Porje. His cattle shed is adjacent to his house. That both the accused had taken away Prasad alongwith them under the guise of purchasing chocolate and did not return till 8.30 p.m. That the salary of accused No. 1 was Rs. 8000/- per month and that the accused was demanding Rs. 20,000/- as an advance. P.W. 1 was informed by his nephew Rutik that he had seen Prasad in the company of both the accused proceeding towards Nasik Road Railway station in an autorickshaw. He had inquired with accused Raju. At that time, Prasad was fast asleep. Therefore, P.W. 1 called upon accused No. 1 and inquired about him, upon which Raju replied that he would return home after reaching Ramkisan at the railway station.

5 According to P.W. 1, his brother-in-law Samadhan had called upon the accused No. 1. In reply, the accused No. 1 had demanded Rs. 25,00,000/-, failing which Prasad would be killed. Police had then been to Jabalpur and other peripheral areas alongwith Viju, the maternal cousin of the complainant, in search of Prasad. P.W.1 was unable to give the cell phone number of Samadhan Tanaji Shirsat, the person who called upon the accused No. 1 as well as the cell phone number of the accused.

6 P.W.5 Dhanaji Porje happens to be the elder brother of the complainant. He was acquainted with accused No. 1 as he was serving with his younger brother. According to him, when he learnt about missing of Prasad, he called upon the accused No. 1 at about 9 to 10 p.m. on the same day and he was informed by accused No. 1 that they had been to Indira Nagar and would return after having seen of his relative. The accused No. 1 had not returned and had later switched off his mobile. P.W. 5 had accompanied P.W. 1 to Upnagar Police station for lodging the report. On the same day, in the midnight he was able to contact accused No. 1. Accused No. 1 had asked P.W. 5 to reach Jabalpur with Rs. 25,00,000/- for releasing Prasad. The said

conversation had taken place between P.W. 5 and accused No. 1 in the presence of police officer and hence, police had proceeded to Jabalpur alongwith his brother. He was confronted with his previous statement. There are certain material omissions in his evidence, which is admitted by the witness.

7 PW.6 Vijay Davange happens to be the maternal cousin of PW. 1. PW. 6 had accompanied the police to Jabalpur. They reached Jabalpur on 12/4/2016 at about 4 p.m.. They had tried to take help from the police from Jabalpur. They had proceeded to Gohelpur. They found that at a pan stall, a small child was eating. They saw that victim Prasad was eating something. They had seen the accused No. 1 talking to someone on his cell phone. He was apprehended by the police. And from there they had returned to Upnagar Police Station at Nashik.

8 PW.7 Nivant Jadhav, PSI, Upnagar Police station, Nashik has deposed before the Court that he had apprehended the accused on 12/4/2016. According to him, Upnagar Police had sent him the clip of the conversation between accused and the family members of the victim. From the nature of conversation, it had transpired that he was

on a busy road having heavy traffic. Therefore, they have reached at Gosalpur area, where the child was found sitting at the kiosk. P.W. 6 had identified the child. They had learnt from the owner of the kiosk that the child was accompanied by a person who was standing nearby talking on his cell phone. Upon seeing the police, the said person had started to flee. The local police had accosted the said person and on enquiry, the said person has disclosed his name as Raju. He was taken to Gohelpur police station and from there, to Nashik. The station diary entry made in local police station is at Exh. 36. It is admitted by P.W. 7 that he did not have either the photograph of the accused and was not even knowing the name of the accused.

9 Learned Counsel for the appellant has vehemently submitted that there is no material on record to even remotely connect the appellant with the alleged offence. The lacunas in the investigation go to the root of the matter. Hence, the accused deserves to be acquitted.

10 Per contra, the learned APP vehemently submitted that the evidence on record clearly establishes the offence under section 364A

of the Indian Penal Code. Learned APP supports the Judgment of the trial court and submits that in the present case, no interference is called for.

11 With the help of learned Counsel appointed for the appellant and the learned APP we have gone through the record and the facts established by the prosecution are as follows :

- (i) That accused No. 1 was working with P.W. 1.
- (ii) That the child was missing from his residential house since 9/4/2016 and was found on 12/4/2016 at Gosalpur.
- (iii) The accused are arrested at Gosalpur on 12/4/2016.

The facts established are not sufficient to hold that the prosecution has proved the offence punishable under section 364A of the Indian Penal Code.

12 The prosecution has not examined the mother of P.W. 1 from whose custody the accused are alleged to have kidnapped the child. Secondly, P.W. 1, P.W. 5 and 6 have contended that they had contacted the accused before they went to lodge the FIR. However, they had not mentioned the cell phone number of either of the accused. There is no whisper about any demand of Rs. 25,00,000/- at

the behest of the accused. It appears that P.W. 6 was directed to contact the accused by the police and at that juncture, the cell phone was kept on surveillance and hence, they realised that the accused is at Jabalpur. The demand of Rs. 25,00,000/- has not been proved by the prosecution as the prosecution has failed to examine Samadhan to whom the demand of Rs. 25,00,000/- was made at the first instance. It is further pertinent to note that P.W. 1 has expressed his inability to furnish the phone number of Samadhan Tanaji Shirsat and Suvarna Porje who had allegedly contacted the accused and to whom the demand was made. The fact that P.W. 1 has shown his inability to mention the phone number of the accused would falsify that he had contacted the accused No. 1.

13 The prosecution has examined P.W. 2 Sunil Varade to prove the seizure of railway tickets and one cell phone at the instance of accused No. 1. The investigating agency had seized five railway tickets. Two tickets dated 10/4/2016 from Pune to Jabalpur, one ticket of 11/4/2016 of Kalyan to Jabalpur, another platform ticket of 11/4/2016 and one railway ticket of Mumbai CST to Kurla. It is not clear as to whether the accused was having the railway tickets

purchased by him for travelling to Jabalpur. There are two platform tickets of 11/4/2016. It is not known as to how he could purchase the platform ticket in Bombay if he was in Gosalpur from 10/4/2016 to 12/4/2016. The train had left Pune junction at 7.36 p.m. It takes about 16 hours 45 minutes to reach Jabalpur from Pune by train. It is impossible to imagine that on 11/4/2016 the accused would be travelling from CST to Kurla in Bombay. The circumstance that the accused had kidnapped the child and taken him to Jabalpur by train and then the finding of the child on 12/4/2016 has no link and hence, it is clear that the said circumstance has not been proved by the prosecution.

14 The SIM card in the Sansui cell phone was of the number 9673327854. According to P.W.5 the cell phone number of the accused was 9673327858. The investigating officer had not recorded the statement of any nodal officer and called for any call details record either of P.W. 5 or the accused to show that there was any contact between them on 12/4/2016 or prior to it. The arrest panchanama is at Exh. 16 and is P.W. 2 Sunil Varade is the panch who has proved the said panchanama. He has categorically stated that the railway tickets

were kept on the table of the police station, when he saw those tickets. The arrest panchanama drawn in Upnagar Police Station is dated 13/4/2016 between 3.50 p.m. and 4.30 p.m.

15 In the course of investigation, the scene of offence is shown as the place from where the child was allegedly kidnapped. In fact, the investigating agency ought to have drawn the map of the scene from where the child was found in the company of the accused. The scene of offence panchanama is at Exh. 18.

16 The case is based on circumstantial evidence and the chain of circumstances in the present case has not been established. It is incumbent upon the prosecution to not only prove a singular circumstance but to establish the chain of circumstance which lead to an inference that the accused is guilty of the offence alleged against him.

17 Section 364-A of the Indian Penal Code reads thus :

“[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 2[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 essential ingredient of an offence punishable under section 364-A of the Indian Penal Code is in the nature of coercion i.e. to pay ransom or to do an act or abstain from doing an act. Therefore, it is the intention of the person who is kidnapping, which needs to be taken into account. In the present case, the prosecution has failed to establish that a threat was extended either to P.W. 1, P.W. 5 or P.W. 6 to pay ransom or that the child would be killed or hurt. Even when the child was found near the kiosk, it was seen that he was relishing some eatables at the kiosk. It was incumbent on the prosecution to examine Prasad, the child who was abducted as he would be the only person who could throw light upon what exactly had transpired or the activities of the accused persons. It is not the case of P.W. 1 that upon being released, the child was found to be in a disturbed state of mind or he had disclosed any disturbing factor to P.W. 1, P.W. 5 and P.W. 6. The fact that there was no threat nor coercion to pay ransom to P.W.1 at the very first instance would lead to an inference that the essential

ingredients of Section 364-A of the Indian Penal Code has not been established. The mode and media through which a demand was made or pressed, has to be necessarily established and prosecution has miserably failed to do so. Hence, the offence under section 364-A of the Indian Penal Code has not been proved. It is also incumbent upon the prosecution to establish the mode of communication of threat or payment of ransom.

18 In view of the above discussion, it is clear that the prosecution has not proved the guilt of the accused beyond reasonable doubt and hence, the accused deserves to be acquitted of all the charges levelled against him. The accused is in custody since 12/4/2016.

19 Before parting with the Judgment, we appreciate efforts put in by the learned Counsel Mr. Vivek Arote, appointed to espouse the cause of the appellant. The learned Counsel Mr. Vivek Arote is entitled for the professional fees as per rules.

20 Hence, following order is passed :

ORDER

- (i) The Criminal Appeal is allowed.
- (ii) The conviction and sentence imposed upon the appellant vide Judgment and Order dated 21st August, 2017 passed by the learned Additional Sessions Judge, Nashik in Sessions Case No. 191 of 2016 is hereby quashed and set aside.
- (iii) The appellant is acquitted of all the charges levelled against him. He be released forthwith, if not required in any other offence.
- (iv) Fine amount, if paid be refunded.
- (v) The appeal is disposed of accordingly.

(PRITHVIRAJ K. CHAVAN, J)

(SMT. SADHANA S. JADHAV, J)