

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.566 of 2016

Arising Out of PS. Case No.-211 Year-2010 Thana- BOCHAHAN District- Muzaffarpur

Md. Azibul Rahman @ Kallu Son of Md. Habib Resident of village- Rampur
Kesho Malahi, P.S.-Paroo, District- Muzaffarpur Appellant/s
Versus
The State of Bihar Respondent/s

Appearance :
For the Appellant/s : Mr. Nirajan, Advocate
For the Respondent/s : Mr. Dilip Kumar Sinha, APP

CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and
HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA)

Date : 28-08-2023

Heard Mr. Nirajan, learned counsel appearing on behalf of the appellant and learned Additional Public Prosecutor appearing on behalf of the State.

(2) By the impugned judgement dated 22.04.2016 and sentence dated 27.04.2016 passed by the learned District and Sessions Judge, Muzaffarpur, in S.Tr. No. 466/12 arising out of Bochahan P.S. Case No. 211/2010, the appellant has been convicted and sentenced as under:-

IN CRIMINAL APPEAL (DB) NO. 566 of 2016					
Appellant's Name	Conviction under Sections	Sentence			
		Imprisonment	Fine (Rs.)	In default of fine	
Md. Azibul Rahman @ Kallu	364(A) and 34 of the Indian Penal Code	For life	15,000/-	Rigorous Imprisonment of 6 months	

(3) Case of prosecution as it springs from self-written statement of Sub-Inspector, Jitendra Kumar Singh, (PW-



4) addressing to S.H.O.-Bochahan, which was recorded on 28.12.2010 at about 2:45 P.M. at Tilak Tajpur Chowk police station stating thereof that he received information today itself at about 7:45 A.M. from one Dilip Kumar Sinha, resident of Bhusahi, Police Station- Bochahan over telephone that his son, namely, Shubham Sinha (**PW-5**/victim), aged about 13-14 years, who is a student of class - 9th of D.A.V school, while going to Bhusahi in connection with his study by bicycle and as so going after short distance, a red coloured Bolero vehicle bearing registration no. BR06P5449 carrying five to seven persons and one silver coloured platina motorcycle bearing registration no. BR06N6912 driving by a person kidnapped his son Shubham Sinha (PW 5/victim) and went towards Bhutane leaving a paper note on spot, raising demand for Rs. 20,00,000/- (Rupees Twenty Lac only) as ransom. It is stated further that a *sanha* of said information was registered by him and information of this occurrence was also given to the senior police officers, thereafter, he alongwith A.S.I. Kameshwar (**PW- 6**), A.S.I. Ramprit Singh (**PW- 1**), Havaladar-Radhey Mohan Singh, Constable No. 621, Surendra Prasad Yadav, Constable No. 394 and one Home-guard Ramesh Rai also the driver of police vehicle started to follow kidnappers. While chasing



kidnappers/criminals, as they arrived on Bhutane chowk and enquired from local people, they were informed that one red coloured Bolero vehicle bearing registration no. BR06P5449 carrying five to seven persons alongwith one silver coloured platina motorcycle bearing registration no. BR06N6912 aheading Bolero just crossed this place with high speed. He passed over this information to his senior officers and also informed to nearby police stations. In the meantime, Deputy Superintendent (East Zone) Sibli Nomani also arrived to Bhutane Chowk with all armed police forces to cooperate and he also narrated the episodes to them. Thereafter, they collectively started to chase kidnappers/criminals in same direction, and in course of chasing as they arrived on Chapra chowk, they again enquired from locals, who again confirmed that a red coloured Bolero vehicle bearing registration no. BR06P5449 having five to seven persons just went towards Padri Kawahi O.P., alongwith one silver coloured platina motorcycle bearing registration no. BR06N6912 driving by a young person. This information was again passed over to senior police officers and entire police team moved towards Padri Kawahi O.P., in the meantime, Minapur S.H.O. (Station House Officer), namely, Jitendra Prasad also joined them. On further



enquiry at Padari Kawahi O.P. they came to know that both vehicles went in direction of Mahilwara. This information was also passed over to senior police officers and nearby police stations, and thereafter, police party moved towards Mahilwara. As he alongwith police personnels arrived at Mahilwara, it was confirmed by locals that red coloured Bolero vehicle bearing registration no. BR06P5449 and silver coloured platina motorcycle bearing registration no. BR06N6912 driven by one young person just crossed this place in very high speed. He again informed senior officers about the development and continued to chase both vehicles. While they were chasing kidnappers/criminals and as so they were just behind 150 to 160 yards of Tilak Tajpur chowk, they found one red coloured Bolero vehicle and one platina motorcycle were running with high speed, coming close while chasing, police party asked them to stop, resultantly, Bolero vehicle and motorcycle stopped and the persons, who were inside the vehicle and were riding the motorcycle started to run away, who were apprehended immediately after chasing for a short distance. All apprehended five persons brought near to Bolero vehicle bearing registration no. BR06P5449 and by the same time some people arrived there on motorcycle claiming to be the family members of Shubham



Sinha (**PW- 5/victim**). Said Bolero vehicle was searched by complying the rules in presence of two witnesses, namely, Roshan@Vivek Gaurav (**PW- 2**) son of Rajesh Kumar and Sanjeev Kumar@Raman Srivastava (**PW- 3**) son of Late Satyadev Prasad, both resident of Sakni Gosabadh road Rajendra Maarg of Town P.S., Dist.-Muzaffarpur, whereupon after search of Bolero, a young boy aged about 13-14 years old found sitting under the back seat of vehicle, whose hand was tied up with red muffler. On enquiry, said young boy disclosed his name as Shubham Sinha (**PW- 5/victim**) and his muffler was un-tied immediately, who disclosed his father's name as Dilip Kumar Sinha resident of village Bhusahi, P.S.-Bochahan. It was stated by him that today i.e., on 28.12.2010 he as usual was going to his D.A.V. school, located as Bakhari from his house at Bhusahi and as he travelled for a short distance, all apprehended persons forcibly taken him inside Bolero vehicle on point of pistol. It is also stated by Shubham Sinha (**PW- 5/victim**) that four kidnappers/criminals leave vehicle on way for undisclosed destination. On enquiry, Shubham Sinha (**PW- 5/victim**) further disclosed that they were talking about the ransom money of Rs. 20,00,000/- (Rupees Twenty Lac only) and naming each other as Lal Bihari, Pankaj, Md. Azibul Rahman (appellant), Subodh



Sahani, Lal Babu Singh, Ravi Singh, Vinay Sahani and Balkrishan. The person, who were apprehended from Bolero vehicle and motorcycle were disclosed their name as:- (i) Lal Bihari, resident of Pakri, P.S.- Hathaudi, Dist.- Muzaffarpur (ii) Pankaj Kumar, son of Vinod Sahni resident of Kawahi, P.S.- Runnisaidpur, Dist.- Sitamarhi, (iii) Md. Azibul@Kallu, son of Md. Habib resident of Malahi, P.S.- Paarur, Dist.- Muzaffarpur, (iv) Pankaj Kumar son of Kameshwar Singh resident of Galhaul, P.S.- Sindhia, Dist.- Samastipur, who presently reside at Rampur colony, P.S.- Sadar, Dist.- Muzaffarpur and (v) Subodh Sahani son of Rambachan Sahani, resident of Punarwara shyam, P.S.- Hathauri, Dist.-Muzaffarpur. He also disclosed the name of his accomplice in said occurrence as:- (i) Lal Babu Singh son of Radhey Krishna Bhagat and (ii) Ravi Singh son of Lal Babu Singh, both village of Kanhara, P.S.- Bochahan, Dist.- Muzaffarpur, (iii) Vinay Sahani son of Mahabir Sahani, resident of Dubarbanna, P.S.- Hathauri, Dist.- Muzaffarpur and (iv) Bal Krishan Sahani son of Sukeshwar Sahani, village-Bhushra, P.S.- Gayghat, Dist.- Muzaffarpur, who were equipped with arms and leave Bolero vehicle somewhere in way. It was also disclosed by them that after planning they kidnapped Shubham Sinha (**PW- 5/victim**) for a ransom money



of Rs. 20,00,000/- (Rupees Twenty Lac only), where Bolero vehicle was of Pankaj Singh and the motorcycle was of Lal Bihari Mahto. On search in presence of two witnesses, namely, Raushan@Vivek Gaurav (**PW- 2**) son of Sri Rakesh Kumar and Sanjeev@Raman Srivastava (**PW- 3**) son of Late Satydev Prasad, both resident of Golabadh road P.S. town, dist.- Muzaffarpur from possession of arrested accused persons three mobiles set of Soni Erection of Nokia Company and one Chinese mobile set were seized. Further from Bolero vehicle tie, belt of red colour and red colour muffler were also recovered which was used to tie up the hand of Shubham Sinha (**PW- 5/victim**). One black glove was also recovered. In presence of these witnesses, (i) red coloured Bolero vehicle having SLE No. BR06P5449, Chasis No. MA1PL2GAK82F39839, Engine No. A84 F40683, (ii) One silver coloured platina motorcycle having registration no. BR06N6912, (iii) Five mobile sets from the accused persons and (iv) Tie, belt, muffler and gloves were seized and accordingly, a seizure list was prepared which were duly signed by these witnesses. A copy of seizure list was supplied to arrested accused person/appellant. In present raid, active role was also played by nearby police station. Lastly, he claimed that all apprehended five accused persons alongwith



non-apprehended co-accused, namely, Lal Babu Singh, Ravi Singh, Vinay Sahani and Bal Krishna Sahani for the ransom of Rs. 20,00,000/- (Rupees Twenty Lac only) kidnapped Shubham Sinha (**PW- 5**/victim). It is stated that offence of section 364 (A) and 34 of the Indian Penal Code (in short 'I.P.C.') is a cognizable offence. Hence, all these accused persons were arrested. Accordingly, the appropriate legal proceedings was requested to initiate.

(4) On the basis of above self-statement of informant (**PW- 4**) Bochahan P.S. Case No. 211 of 2010 dated 29.12.2010 under Sections 364(A) and 34 of the Indian Penal Code was registered, where after investigation the charge-sheet was submitted under Sections 364(A) and 34 against accused persons including appellant/convict. After taking cognizance by learned concerned Judicial Magistrate 1st Class, the matter was committed to the Court of Session on 08.08.2012, where charge was framed on 10.09.2012. Apprehended co-accused Vinay Sahani and Pankaj Kumar found juvenile and, as such, their case was separated and sent to J.J.B. (for short 'Juvenile Justice Board') vide order dated 10.07.2015. Considering the materials available on records, in totality the charges were framed against accused persons including appellant/convict under Sections 364



(A) and 34 of the Indian Penal Code, which they plead “not guilty” and claimed trial, where after conclusion of trial, the accused persons including appellant/convict were convicted for the offence under Sections 364 (A) and 34 of the Indian Penal Code, where sentence was awarded for life imprisonment alongwith fine.

(5) Hence, the present appeal;

(6) To substantiate its case prosecution altogether examined six (06) witnesses, namely, **PW- 1**, Ramtapit Singh S/o Late Devnath Singh, **PW- 2**, Roshan Singh@Vivek S/o Sri Rakesh Kumar, **PW -3**, Sanjeev Kumar@Raman Srivastava S/o Late Satyadev Prasad, **PW- 4**, Jitendra Kumar Singh S/o Sri Deepnarayan Singh (informant), **PW- 5**, Shubham Sinha (victim) S/o Sri Dilip Kumar Sinha and **PW- 6**, Kameshwar Singh S/o Late Suryadev Singh, who is the investigating officer of this case;

(7) Further prosecution relied upon the following exhibits/documents which are as:-

Ext.- 1- Signature of PW- 2 on the statement made under Section 164 of the Cr.P.C.,

Ext. -2- Signature of PW- 2 on seizure



list,

Ext.- 2/1- Signature of PW- 3 on seizure list,

Ext. -4- Seizure List,

Ext.- 5- Self-statement and

Ext. -6- Signature of PW- 5 on his statement recorded under Section 164 of the Cr.P.C.

(8) Appellant/convict was examined by learned Trial Court u/s 313 of the Criminal Procedure Code (Cr.P.C.), where complete innocence was shown by denying the incriminating circumstances/evidences as appears against him during the trial.

(9) The following defence witnesses were also examined on behalf of appellant/convict which are: **DW-1-** Sumitra Devi D/o Jogi Mahto, **DW- 2-** Baijnath Sahani S/o Saryug Sahani, **DW -3 -** Permanand Rai S/o Late Jaymangal Rai and **DW- 4 -** Chulahai Sahani S/o Lakshaman Sahani.

ARGUMENT ON BEHALF OF THE LEARNED COUNSEL APPEARING FOR THE APPELLANT/CONVICT:-

(10) It is submitted by learned counsel appearing on behalf of the appellant/convict that from the available evidence, it can be gathered safely that prosecution failed to



established its case beyond all reasonable doubts. In support of submissions, it is submitted that though victim/PW 5 rescued by the police personnels, F.I.R. was lodged on the next day of the recovery and moreover, same was communicated to learned Jurisdictional Magistrate after 48 hours, which creates a suspicion about entire occurrence as narrated through F.I.R. It is submitted that no demand of ransom can be said proved as the father of victim, namely, Dilip Kumar Sinha was not examined before the learned Trial Court and even the cheat of paper through which alleged demand of ransom of Rs. 20,00,000/- (Rupees Twenty Lac only) was made, not collected during the course of investigation. It is submitted that **PW -5**, who is the victim of this case, namely, Shubham Sinha is also not supporting the fact that any demand of ransom raised to him, while he was in captivity during the course of kidnapping, rather it was stated by him that kidnappers were talking about ransom money with each other. It is submitted that **PW -2** Roshan Singh@Vivek, who is the cousin of victim Shubham Sinha (**PW- 5**) also failed to support the factum of demand of ransom money and same is also about **PW-3**, namely, Sanjeev Kumar@Raman Srivastava, who is the uncle of victim Shubham Sinha (**PW- 5**). It is submitted that with such evidence in hand it



cannot be said that important ingredients as to established case under Section 364-A of the Indian Penal Code, i.e., demand “to pay a ransom” was proved. Learned counsel further submitted that threshold of assault caused to victim boy (**PW-5**) is not of such level, which may be accepted for an offence where minimum punishment is of life imprisonment and, as such, the prosecution failed to established its case beyond all reasonable doubts. Learned counsel appearing on behalf of the appellant/convict relied upon the legal report of *Shaik Ahmed vs. State of Telengana {as reported through (2021) 9 SCC 59}*. Learned counsel also relied upon the report of Hon. Supreme Court in the matter of *Ravi Dhingra vs. State of Haryana {reported as AIR 2023 Supreme Court 1243}*. While concluding the argument, it is submitted that appeal preferred by co-convict Subodh Sahani and Lal Bihari Mahto have partly allowed by this Court by setting aside their conviction under Section 364-A of the Indian Penal Code through Cr. Appeal (DB) No. 398 of 2016 and Cr. Appeal (DB) No. 454 of 2016, respectively and furthermore case of present appellant/convict stands on same footing as he was also convicted with same judgment having same set of evidences.

ARGUMENT ON BEHALF OF THE LEARNED APP APPEARING



FOR THE STATE:-

(11) It is submitted by learned APP while arguing on behalf of the State that all ingredients under Section 364-A of the Indian Penal Code is well established in present case. It is submitted that victim (PW- 5) rescued during the course of kidnapping itself and appellant/convict was also arrested during course of occurrence. It is submitted that PW- 5, namely, Shubham Sinha, who is the victim himself clearly stated that kidnappers i.e., appellant/convict alongwith other co-accused persons was talking with each other for a ransom of Rs. 20,00,000/- (Rupees Twenty Lac only) and one of them also said to kill him after receiving the ransom amount, as he identified them. Victim boy (PW-5) also caused hurt during kidnapping. It is submitted that reasonable apprehension to commit murder is there as victim identified them and only due to timely arrival of the police parties, the life of victim/Shubham Sinha (PW- 5) could saved from the hand of kidnappers including appellant/convict. Learned APP conceded that appeals of co-convicts were partly allowed by this Court.

(12) In view of the evidences as available on record and rival submissions as advanced by the parties, issue for consideration which appears to us in this appeal as to whether the facts of this case attracts offence under Section 364-A of the



Indian Penal Code and if the answer is in negative whether it would be appropriate to modify the conviction to a sentence under Section 363 of the I.P.C. It would be appropriate to discuss all the relevant and inter-related provisions of the Indian Penal Code as available u/s 361, 363, 364 ad 364-A of the Indian Penal Code with comparative analysis, as to better understanding of the legal propositions with available set of facts and circumstances:

Section 361. Kidnapping from lawful guardianship

Whoever takes or entices any minor under sixteen (16) years of age if a male, or under eighteen (18) years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship.

Explanation- The words “lawful guardian” in this section include any person lawfully entrusted with the care or custody of such minor or other person.

Exception- This section does not extend to the act of any person who in good faith believes himself to be the father of an illegitimate child, or who in good faith believes himself to be entitled to the lawful custody of such child, unless such act is committed for an immoral or unlawful purpose.



Section 363. Punishment for kidnapping

Whoever kidnaps any person from India or from lawful guardianship, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Section 364. Kidnapping or abducting in order to murder

Whoever kidnaps or abducts any person in order that such person may be murdered or may be so disposed of as to be put in danger of being murdered, shall be punished with imprisonment for life or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Section 364-A. 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, of imprisonment for life, and shall also be liable to fine.

(13) It would be appropriate to reproduce



paragraph no. 12, 13 and 14 of ***Ravi Dhingra vs. State of Haryana {reported as AIR 2023 Supreme Court 1243}*** for better understanding as same appears relevant with the given set of facts and circumstances:-

Paragraph 12:- We note that Section 363 of the I.P.C. punishes the act of kidnapping and Section 364 thereof punishes the offence of kidnapping or abduction of a person in order to murder him. Section 364-A further adds to the gravity of the offence by involving an instance of coercive violence or substantial threat thereof, to make a demand for ransom. Accordingly, the maximum punishment for the three crimes is seven years imprisonment; ten years' imprisonment and imprisonment for life or death, respectively.

The nuanced, graded approach of the Parliament while criminalising the condemnable act of kidnapping must be carefully interpreted. Before interpreting the varying ingredients of crime and rigours of punishment, and appraising the judgments impugned, we deem it appropriate to reiterate the observations of this Court in ***Lohit Kaushal vs. State of Haryana, {reported as (2009) 17 SCC 106}***, wherein this Court observed as under:

“15. ... It is true that kidnapping as



understood under Section 364-A of the I.P.C. is a truly reprehensible crime and when a helpless child is kidnapped for ransom and that too by close relatives, the incident becomes all the more unacceptable. The very gravity of the crime and the abhorrence which it creates in the mind of the court are, however, factors which also tend to militate against the fair trial of an accused in such cases. A court must, therefore, guard against the possibility of being influenced in its judgments by sentiment rather than by objectivity and judicial considerations while evaluating the evidence.”

Paragraph 13:- *This Court, notably in **Anil vs. Administration of Daman & Diu**, {reported as (2006) 13 SCC 36 (“Anil”)}, **Vishwanath Gupta vs. State of Uttaranchal** {reported as (2007) 11 SCC 633 (“Vishwanath Gupta”)} and **Vikram Singh vs. Union of India**, {reported as (2015) 9 SCC 502 (“Vikram Singh”)} has clarified the essential ingredients to order a conviction for the commission of an offence under **Section 364-A** of the Indian Penal Code in the following manner:*



*(a) In **Anil**, the pertinent observations were made as regards those cases where the accused is convicted for the offence in respect of which no charge is framed. In the said case, the question was whether appellant therein could have been convicted under **Section 364-A** of the Indian Penal Code when the charge framed was under Section 364 read with **Section 34** of the I.P.C. The relevant passages which can be culled out from the said judgment of the Supreme Court are as under:*

“54. The propositions of law which can be culled out from the aforementioned judgments are:

(i) The appellant should not suffer any prejudice by reason of misjoinder of charges.

(ii) A conviction for lesser offence is permissible.

(iii) It should not result in failure of justice.

(iv) If there is a substantial compliance, misjoinder of charges may not be fatal and such misjoinder must be arising out of mere misjoinder to frame charges.

*55. The ingredients for commission of offence under **Section 364** and **364-A** are different. Whereas the intention to kidnap in order that he may be murdered or may be*



so disposed of as to be put in danger as murder satisfies the requirements of [Section 364](#) of the Penal Code, for obtaining a conviction for commission of an offence under [Section 364-A](#) thereof it is necessary to prove that not only such kidnapping or abetment has taken place but thereafter the accused threatened 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 organisation or any other person to do or abstain from doing any act or to pay a ransom.

56. It was, thus, obligatory on the part of the learned Sessions Judge, Daman to frame a charge which would answer the description of the offence envisaged under [Section 364-A](#) of the Indian Penal Code. It may be true that the kidnapping was done with a view to get ransom but the same should have been put to the appellant while framing a charge. The prejudice to the appellant is apparent as the ingredients of a higher offence had not been put to him while framing any charge.”

*(b) In **Vishwanath Gupta**, it was observed as under:*



“8. According to Section 364-A, whoever kidnaps or abducts any person and keeps him in detention and threatens to cause death or hurt to such person and by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt, and claims a ransom and if death is caused then in that case the accused can be punished with death or imprisonment for life and also liable to pay fine.”

9. The important ingredient of [Section 364-A](#) is the abduction or kidnapping, as the case may be. Thereafter, a threat to the kidnapped/abducted that if the demand for ransom is not met then the victim is likely to be put to death and in the event death is caused, the offence of [Section 364-A](#) is complete. There are three stages in this section, one is the kidnapping or abduction, second is threat of death coupled with the demand of money and lastly when the demand is not met, then causing death. If the three ingredients are available, that will constitute the offence under [Section 364-A](#) of the Indian Penal Code. Any of the three ingredients can take place at one place or at different places.”



(c) In **Vikram Singh**, it was observed as under:

“25. ... [Section 364-A](#) of the Indian Penal Code has three distinct components viz. (i) the person concerned kidnaps or abducts or keeps the victim in detention after kidnapping or abduction; (ii) threatens to cause death or hurt or causes apprehension of death or hurt or actually hurts or causes death; and (iii) the kidnapping, abduction or detention and the threats of death or hurt, apprehension for such death or hurt or actual death or hurt is caused to coerce the person concerned or someone else to do something or to forbear from doing something or to pay ransom.” These ingredients are, in our opinion, distinctly different from the offence of extortion under Section 383 of the I.P.C. The deficiency in the existing legal framework was noticed by the Law Commission and a separate provision in the form of [Section 364-A](#) I.P.C. proposed for incorporation to cover the ransom situations embodying the ingredients mentioned above.”



It is necessary to prove not only that such kidnapping or abetment has taken place but that thereafter, the accused threatened to cause death or hurt to such person or by his conduct gave rise to a reasonable apprehension that such person may be put to death or hurt or cause 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.

Paragraph 14:-*Most recently, this Court in **SK Ahmed** has emphasised that [Section 364-A](#) of the I.P.C. has three stages or components, namely:*

(i) kidnapping or abduction of a person and keeping them in detention;

(ii) threat to cause death or hurt, and the use of kidnapping, abduction, or detention with a demand to pay the ransom; and

(iii) when the demand is not met, then causing death.

The relevant portions of the said judgement are extracted as under:

“12. We may now look into [Section 364-A](#) to find



out as to what ingredients the section itself contemplate for the offence. When we paraphrase [Section 364-A](#) following is deciphered:

(i) “Whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction”

(ii) “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,

(iii) or causes hurt or death to such person in order to compel the Government or 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”

(iv) “shall be punishable with death, or imprisonment for life, and shall also be liable to fine.”

The first essential condition as incorporated in [Section 364-A](#) is “whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction”. The second condition begins with conjunction “and”. The second condition has also two parts i.e. (a) threatens to cause death or hurt to such person or (b) by his conduct gives rise to a



reasonable apprehension that such person may be put to death or hurt. Either part of above condition, if fulfilled, shall fulfil the second condition for offence. The third condition begins with the word “or” i.e. or causes hurt or death to such person in order to compel the Government or 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. Third condition begins with the words “or causes hurt or death 398 to such person in order to compel the Government or any foreign State to do or abstain from doing any act or to pay a ransom”. Section 364-A contains a heading “Kidnapping for ransom, etc.” The kidnapping by a person to demand ransom is fully covered by Section 364-A.

13. We have noticed that after the first condition the second condition is joined by conjunction “and”, thus, 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.

14. The use of conjunction “and” has its purpose and object. [Section 364-A](#) uses the word “or” nine times and the whole section contains only one conjunction “and”, which joins the first and second condition. Thus, for covering an



offence under [Section 364-A](#), apart from fulfilment of first condition, the second condition i.e. “and threatens to cause death or hurt to such person” also needs to be proved in case the case is not covered by subsequent clauses joined by “or”.

15. The word “and” is used as conjunction. The use of word “or” is clearly distinctive. Both the words have been used for different purpose and object. Crawford on Interpretation of Law while dealing with the subject “disjunctive” and “conjunctive” words with regard to criminal statute made following statement:

“... The court should be extremely reluctant in a criminal statute to substitute disjunctive words for conjunctive words, and vice versa, if such action adversely affects the accused.”

xxx

33. After noticing the statutory provision of [Section 364-A](#) and the law laid down by this Court in the above noted cases, we conclude that the essential ingredients to convict an accused under [Section 364-A](#) which are required to be proved by the prosecution are as follows:

(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 organisation or any other person to do or abstain from doing any act or to pay a ransom.

Thus, after establishing first condition, one more condition has to be fulfilled since after first condition, word used is “and”. Thus, in addition to first condition either Condition (ii) or (iii) has to be proved, failing which conviction under [Section 364-A](#) cannot be sustained.”

*Thus, this Court in **SK Ahmed** set aside the conviction under [Section 364A](#) of the IPC and modified the same to conviction under [Section 363](#), for the reason that the additional conditions were not met by observing as follows:*

“42. The second condition having not been proved to be established, we find substance in the submission of the learned counsel for the appellant that conviction of



the appellant is unsustainable under [Section 364-A](#) I.P.C. We, thus, set aside the conviction of the appellant under [Section 364-A](#). However, from the evidence on record regarding kidnapping, it is proved that the accused had kidnapped the victim for ransom, demand of ransom was also proved. Even though offence under [Section 364-A](#) has not been proved beyond reasonable doubt but the offence of kidnapping has been fully established to which effect the learned Sessions Judge has recorded a categorical finding in paras 19 and 20. The offence of kidnapping having been proved, the appellant deserves to be convicted under [Section 363](#). [Section 363](#) provides for punishment which is imprisonment of either description for a term which may extend to seven years and shall also be liable to fine.”

(14) Now, we shall consider the essential ingredients and applicability of the above laid legal ratio to the



fact of present case to deal with the argument advanced on behalf of appellant/convict about absence of ingredients in present case as required to established a case under Section 364-A of the Indian Penal Code.

(15) It is appearing from deposition of **PW- 4**, who is Jitendra Kumar Singh, Sub-Inspector and also informant of this case that he proceeded after lodging a *Sanha* to the effect that the son of one Dilip Kumar Sinha, a student of class nine (09) of D.A.V school, was kidnapped by some unknown persons, while he was on way to his school. It is also deposed by him that the occurrence of kidnapping took place through Bolero vehicle bearing registration no. BR06P5449 and one platina silver coloured motorcycle bearing registration no. BR06N6912. It is clear from his deposition that after giving information to his senior officers, he proceeded alongwith his team to chase the vehicles of kidnappers in the directions in which it was taken away. It is also appearing from his deposition that D.S.P. of East Sibli and S.H.O. Minapur also joined him in exercise to trap kidnappers and rescue the victim/**PW- 5** (Shubham Sinha). It appears that police team apprehended kidnappers and seized alleged Bolero and motorcycle after following them for certain distance, where victim, Shubham



Sinha (**PW- 5**) recovered from Bolero vehicle bearing registration no. BR06P5449, while his hand was tied up with red colour muffler. The said muffler was seized alongwith gloves and tie of the victim and seizure list of that effect was prepared on spot itself. He identified his signature over said seizure list during trial which was exhibit before the learned Trial Court as **Ext. 4**. It is deposed that on enquiry victim boy, **PW-5** said that he was kidnapped on point of pistol for the purpose of ransom. He deposed specifically that the chit of paper demanding ransom of Rs. 20,00,000/- (Rupees Twenty Lac only) was disclosed to him by the guardian of the victim (**PW -5**). It appears from his deposition that the victim (**PW -5**) rescued during the course of kidnapping but the demand for paying ransom of Rs. 20,00,000/- (Rupees Twenty Lac only) was not made to him rather he came to know about ransom demand from his guardian and also from communication amongst co-accused including appellant/convict.

(16) Ramtapeet Singh (**PW- 1**), Roshan Singh @ Vivek (**PW 2**), who are the cousin of victim (**PW-5**) and **PW- 3**, namely, Sanjeev Kumar @ Raman Srivastava, who is the uncle of the victim (**PW- 5**) deposed in their examination in-chief that they came to know about present occurrence of kidnapping from



father of victim (PW-5), namely, Dilip Kumar Sinha on telephone at about 7:40 A.M. It is deposed by **PW- 2** that on said information he alongwith **PW- 3**, namely, Sanjeev Kumar @ Raman Srivastava, who is uncle of victim, jointly proceeded on their motorcycle towards Sitamarhi searching the alleged red coloured Bolero which was used in kidnapping. From deposition of **PW- 2**, it appears that his cousin brother, namely, Shubham Sinha/victim (**PW- 5**) was found inside the Bolero vehicle where his hand was tied up with red colour muffler. It is deposed that co-accused Subodh Sahani, Pankaj Sahani, Pankaj Kumar Singh, Kallu and Lal Bihari Mahto were apprehended on spot while rescuing victim/**PW- 5**, whereas Lal Bahadur Singh, Kheer Singh, Bal Kishan Sahani and Ram Kishan Singh found run away. It also appears from his cross-examination that his statement was recorded under Section 164 of the Cr.P.C. on 03.01.2011, whereas his statement under Section 161 was recorded on 28.12.2010 by police. These two witnesses are also appearing the witness of seizure list and identified their signatures before the Court which was exhibited as **Ext. 2 and 3**. From the deposition of **PW- 2** and **PW- 3** it appears that on their immediate arrival at the place where appellant/convict was arrested by police, victim (**PW- 5**) found inside Bolero vehicle,



where his hand was tied up with muffler. It appears that none of these two witnesses i.e., **PW- 2** and **PW- 3** disclosed about asking ransom money of Rs. 20,000,000/- (Rupees Twenty Lac only) through their depositions. Their depositions is not even whispering about the demand of ransom money.

(17) **PW- 1** is Ramtapit Singh, who is the member of raiding team of **PW- 4**, who is the informant of this case. It appears from his deposition that vehicle of kidnappers alongwith motorcycle were intercepted at Tajpur Chowk where four (04) persons ran away but after short chasing, they were arrested and recovered the victim (**PW- 5**) from the Bolero vehicle, who was identified as Shubham Sinha. It was deposed by him that victim Shubham Sinha was found in back dickey of the Bolero vehicle where his hand was tied up. It is also deposed by him that the family members of Shubham Sinha/victim (**PW- 5**) arrived on spot by motorcycle. It is also deposed that he was told by Shubham Sinha/victim (**PW- 5**) that he was forced to seat inside the vehicle the on point of revolver.

(18) From depositions of these witnesses, it is clear that appellant/convict was apprehended during the course of occurrence of kidnapping itself, where victim was rescued from the vehicle which was used for the purpose of kidnapping. Now,



it would be appropriate to discuss the most important witness of this case, who is the victim himself, who rescued during the course of kidnapping, namely, Shubham Sinha/victim (**PW- 5**). It is deposed by the victim that on 28.12.2010, in the morning about 6:30 A.M. to 7:00 A.M. when he was going to his school by his by-cycle and as so when he went up to 100-150 metres two (02) persons pushed him from his cycle and taken away him on point of pistol. It is deposed that those two (02) unknown persons assaulted him by butt of pistol, who forced him to go with one another person, who was already available there with platina silver coloured motor-cycle. These two (02) unknown persons accompanied him also and they were went up to a red coloured Bolero vehicle in which six (06) persons and driver (appellant/convict) were already seated. It was deposed that the person who rode the motorcycle was escorting the driver of Bolero vehicle throughout the way. It also deposed that his hand was tied up by using red colour muffler by taking his hands on back. It is also deposed by him that he was put in dickey where two (02) of his kidnappers were seated there by putting their legs on him. It is also deposed by him that they were talking to release him after receiving the ransom money of Rs. 20,00,000/- (Rupees Twenty Lac only), where one of them told as he



(victim/**PW-5**) identified all of them, therefore, it would be appropriate to kill him. It is deposed that driver of the vehicle (appellant/convict) were also talking about his share and they were also informed by someone that police are following them. It is deposed that someone from them said that Balkrishan, Ravi, Lal Babu Singh and Vinay, all of you four to leave this vehicle alongwith arms immediately, thereafter, brake was applied and immediately on stopping the vehicle all four persons named above leave vehicle alongwith arms. It is deposed that after moving for a short distance the vehicle was suddenly stopped and the persons, who were sitting there, were found to run away. In the meantime, the dickey was opened and he found police before him. It was also deposed by him that his uncle Sanjeev Kumar @ Raman Srivastava (**PW- 3**) and his cousin brother Roshan Singh @ Vivek (**PW- 2**) arrived there. It is deposed that they all came together to Muzaffarpur. He also deposed that police personnel untied his hand. It is deposed that police arrested five (05) persons on spot and also seized his tie, belt, I-card and cap from the vehicle. It is deposed by him that later on he came to know that the name of bike rider was Subodh Sahani. The victim (**PW-5**) identified Pankaj Sahani, Pankaj, Kallu driver and Lal Bihari Mahto, who were present in Court.



It is deposed by him that all persons, who are present here, were involved in the occurrence. Victim (**PW-5**) further deposed that his statement was recorded before the Magistrate under Section 164 of the Cr.P.C. and he identified his signature thereof before the learned Trial Court, which on his identification was exhibited as **Ext. - 6**. This witness was examined by accused persons separately i.e., by Md. Azibul Rahman @ Kallu (appellant/convict), Subodh Sahani , Vinay, Pankaj and Lal Bihari Mahto. It appears that nothing substantial surfaced on cross-examination on behalf of co-accused Md. Azibul Rahman @ Kallu (appellant/convict) which may creates a doubt on the version of this witness. It is stated by him in his cross examination that in vehicle altogether eight (08) persons were available, namely, Bal Krishan, Ravi, Lal Bihari Mahto, Vinay, Pankaj Sahani, Pankaj Kumar, Kallu and Lal Babu. It is also stated by him (victim/**PW-5**) that Subodh Sahani was the bike rider and all of them were equipped with arms. It is stated by victim/**PW-5** that he also stated before the Magistrate that driver of vehicle was also asking for his share and he came to know about the name of kidnappers as they were talking with each other by their name. This fact was also disclosed by him before police and was also stated while recording statement under 164



of the Cr.P.C. He denied the suggestion as regard to non-involvement of appellant/convict in the occurrence. While cross-examination on behalf of Subodh Sahani, it was deposed by victim/**PW-5** that he never got occasion to read the contents of the ransom letter and he also not disclosed this fact to police, he also stated that he cannot said that who is the author of said letter. It is deposed by him that he was handed over to his parents after three or four hours of his recovery from the kidnappers and till then his father was with him alongwith **PW-2**, **PW-3** and one of his cousin. It was also stated by him that he is not remembering that where he made his signature on seizure list but seizure list (**Ext.-4**) was prepared before him. It also appears from his cross-examination that he was brought before the Magistrate where his father was also available. He denied suggestions that the accused person/appellant/convict was not involved in the occurrence. On Court examination victim (**PW-5**) stated that the person standing in the dock, namely, Pankaj and Balkrishan are same persons, who pushed him from his by-cycle and taken away by assaulting him. It is also deposed by him that he came to know about the name of kidnappers before he was put inside the dickey. He also stated to identify him by his face. He further stated on Court question that statement was



recorded by Magistrate and after that Subodh Sahani was arrested. It is also stated by him on Court question that Pankaj Sahani, Kallu driver (appellant/convict) and Lal Bihari Mahto was already arrested. It is also stated by him that they were talking about some *Mukhiya* or *MLA* and were also joking with each other. Victim further stated on Court question that the road was dangerous as told by Lal Bihari Mahto where in reply it was told by Balkrishan that you are also not less dangerous. It is stated by him that he came to know about the full name of Mahtoji only after his arrest. It is also stated by him that Mahto asked mobile from Pankaj by taking his name while he was sitting there and all these four (04) persons standing in dock were arrested on spot.

(19) Father of minor victim (**PW-5**), namely, Dilip Sinha, who received telephonic call from kidnappers to pay ransom of Rs. 20,00,000/- (Rupees Twenty Lac only) not examined by learned Trial Court. Alleged cheat of paper demanding Rs. 20,00,000/- (Rupees Twenty Lac only) as ransom money claimed to be found at the place of occurrence during course of investigation was also not produced before the Court and moreover, “*sanha entry*” in police station was also not brought before the learned Trial Court by **PW-4**, suggesting



demand to pay ransom. Admittedly, no demand was made to **PW-4** (informant), as well to **PW-1**, **PW-2** and **PW-3**, who are relative of victim (**PW-5**) and their deposition in support of demand to pay ransom of Rs. 20,00,000/- (Rupees Twenty Lac only) is based upon hearsay input, as said by father of victim, namely, Dilip Kumar Sinha, who himself failed to appear before the learned Trial Court. As far, deposition of victim (**PW-5**) is concerned he specifically deposed that he came to know about demand to pay ransom money from his father and he never gone through alleged cheat of paper recovered from place of occurrence, making demand for ransom money doubtful, whereas he came to know about said demand from conversation of accused persons, while in Bolero vehicle. It also appears from his deposition that no demand was even made to him directly. In view of above, it can be said safely that prosecution failed to established its case beyond reasonable doubt to the extent that there was “demand to pay a ransom”.

(20) It appears from the deposition of victim (**PW-5**) that though he was assaulted by butt of pistol by kidnappers but he never deposed that any threat to kill was advanced to him. His hand was tied up by using his red colour muffler and thereafter, he was put inside dickey of Bolero. Alleged hurt



appears to secure kidnapping and to ensure victim (**PW-5**) to reach upto Bolero, which was parked on road. Though, he deposed that one of the accused persons told another that as he identified them, it is safer for them to kill victim (**PW-5**) after receiving ransom money but it was not responded by others or agreed upon. No direct threat to kill was advanced to him inside vehicle. Admittedly, no recovery of arms made from any co-accused persons including appellant/convict. Victim (**PW-5**) admittedly not examined by doctor. Having these evidence in hand it can be said safely that for proving the ingredients of threat, above discussed assault and circumstances is not appears sufficient to bring charge under home of Section 364-A of the Indian Penal Code, particularly when sentence carrying maximum for death and minimum of life imprisonment, being a low evidentiary threshold as same would be amount to make punishment meaningless for kidnapping under Section 363, 364 & 364-A of the Indian Penal Code.

(21) No doubt, **PW-5** (victim) recovered by police team headed by **PW-4** during the course of kidnapping itself. He was found inside the Bolero, which was used in kidnapping, where appellant/convict including other co-accused apprehended on spot. Red colour muffler which used for tying



hand of **PW-5**/victim, tie, cap and gloves were recovered from Bolero itself. **PW-1**, **PW-2** and **PW-3**, who are relatives of **PW-5**, immediately came to place of recovery as they were also following the vehicles of kidnappers and found **PW-5** inside Bolero, where his hand was found tied up with red colour muffler. This fact was also supported by **PW-4**, who is the informant of this case. Nothing appears contradictory to doubt their version and, as such, it can be said safely that prosecution established its case to the extent of kidnapping duly punishable under Section 363 of the Indian Penal Code.

(22) Therefore, it appears to us that conviction of appellant under Section 364-A read with 34 of the Indian Penal Code is unsustainable under the law.

(23) This Court has vide power while hearing appeal to alter charge under Section 216 of the Cr.P.C. with a note of caution that same must be used judiciously and ensure that no prejudice likely to be caused to the accused by addition or alteration of charges. Sub-sec. (4) accordingly prescribes the condition which may caused prejudice.

(24) We also found that appeals of co-convict Subodh Sahni and Lal Bihari Mahto have partly allowed by this Court by acquitting them from charge of Section 364-A of the



Indian Penal Code through Cr. Appeal (DB) No. 398 of 2016 and Cr. Appeal (DB) No. 454 of 2016, respectively.

(25) Therefore, we allow the appeal in part by set aside the conviction of appellant under Section 364-A/34 of the Indian Penal Code and judgment of the learned Trial Court is modified to the above extent.

(26) Accordingly, appellant is now convicted for the offence under Section 363 of the Indian Penal Code i.e., kidnapping and, as such, convict/appellant ordered for sentence of seven years with fine of Rs. 5,000/- (Rupees Five Thousand). If the appellant/convict has completed imprisonment of seven years and has paid the fine of Rs. 5,000/- (Rupees Five Thousand only), we direct above named appellant/convict to be released forthwith; if not wanted in any other case. If not, the appellant shall surrender within a period of two weeks and serve the remainder of his sentence.

(Vipul M. Pancholi, J.)

(Chandra Shekhar Jha, J.)

pooja/-

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CAV DATE	NA
Uploading Date	
Transmission Date	

