

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

CRA-D-491-DB-2013 (O&M).
Date of Decision: 16.05.2023.

Randeep Singh @ Kala
State of Haryana

VERSUS

....Appellant.
....Respondent.

CORAM : HON'BLE MR. JUSTICE HARINDER SINGH SIDHU
HON'BLE MR. JUSTICE LALIT BATRA

Argued by: Mr. Aditya Sanghi, Advocate for appellant.

Ms. Subhra Singh, Additional Advocate General, Haryana.

LALIT BATRA, J.

This criminal appeal has been preferred by appellant-convict Randeep Singh @ Kala, impugning the legality of judgment of conviction dated 03.04.2013 and order on quantum of sentence dated 10.04.2013 rendered by learned Additional Sessions Judge, Ambala, in terms of which, he alongwith co-accused Sikander, was held guilty and convicted for the commission of offence punishable under Section 364A IPC and Section 25 of Arms Act in case FIR No.01 dated 01.01.2008 under Sections 120B, 212 and 364A IPC and Section 25 of Arms Act, Police Station Naraingarh, District Ambala and was sentenced as under:-

Offence	Sentence Awarded
Section 364A IPC	Rigorous Imprisonment for Life and fine of ₹5,000/-. In default of payment of fine, to further undergo Simple Imprisonment for six months.
Section 25 of Arms Act	Rigorous Imprisonment for six years and fine of ₹6,000/-. In default of payment of fine, to further undergo Simple Imprisonment for three months.

2. As per prosecution version, Ajit Dang (complainant/PW-2) moved an application to the police alleging therein that on 31.12.2007 at about 5:30 P.M., his father Ashok Dang (victim/PW-1) had gone to leave his father Lakshman Dass at Rice Sheller, Dehar, Ambli, by car bearing registration No.HR-20H-0016 and at about 6:30 P.M., when he did not return, Ajit Dang (complainant/PW-2) tried several times to contact him on his mobile phone No.94161-45754, but could not make a contact. Thereafter, complainant enquired on the phone of Clerk of the Rice Sheller who told him that his father had already left 15-20 minutes prior thereto. Thereafter, complainant and his family members tried to search his father at their own level in the nearby areas but nothing could be known. Then complainant continued ringing from his phone on the phone of his father and after considerable time, contact was established with the phone of his father, which was picked up by an unknown person, who was speaking a local language and stated that car of his father is parked outside Bus Stand Yamuna Nagar and at 8.00 hours in the morning, they would tell as to what has to be done and police is not to be informed. Thereafter, no contact was established. On the basis of the said application, Rapat No.39 (Ex.P3/1) was entered.

Thereafter, on 01.01.2008, Ajit Dang (PW-2) met the police and stated that he had received a telephonic call on his land-line number from an unknown person who raised demand of ransom of ₹One Crore and also disclosed that his father had been abducted by them. On the basis of application (Ex.P-4), FIR No.01 dated 01.01.2008 (Ex.P-88) was lodged by the police.

On 02.01.2008, while searching Ashok Dang (victim/PW-1), police party reached Yamuna Nagar and received an information that a car make Wagon-R was parked behind Bus Stand, Yamuna Nagar. Thereafter, police party reached the said place and FSL Team as well as Finger Print Expert were called. The car was taken into police possession, vide recovery memo (Ex.P-12). Rough site-plan (Ex.P-90) of place of recovery of car was prepared.

On 04.01.2008, a special team was constituted in connection with abduction of Ashok Dang (victim/PW-1) and a secret information was received regarding presence of Ashok Dang (victim/PW-1) in the sugarcane fields of village Rahra, District Karnal. Police party reached at the spot and got released Ashok Dang (victim/PW-1) from the custody of accused Jasbir @ Mota, Randeep @ Kala (appellant herein) and Sikander and the said accused were apprehended. One countrymade pistol .315 bore was recovered from the possession of accused Jasbir @ Mota and one countrymade pistol .315 bore was recovered from the possession of accused-Randeep Singh @ Kala, whereas one mobile phone was recovered from the possession of accused Sikander. Rough sketches (Ex.P-7 and Ex.P-8) of above said countrymade pistols were prepared. Those countrymade pistols were converted into separate sealed parcels bearing seal having inscription 'KL' and then those parcels alongwith mobile phone were taken into police possession, vide recovery memo Ex.P-9. Photographs (Ex.P-67 and Ex.P-68) of above said place were taken. After inspecting the said place, several articles viz quilts etc. were taken into police possession, vide recovery memo (Ex.P-13) and rough site-plans (Ex.P-91 and Ex.P-92)

were prepared. Accused suffered disclosure statements (Ex.P-14, Ex.P-15 and Ex.P-16) and they were produced in the Court.

Statement (Ex.P-2) of Ashok Dang (victim/PW-1) was recorded by Judicial Magistrate Ist Class, Ambala, wherein he narrated the entire incident and stated that on 31.12.2007 at about 5:45/6:00 P.M., after leaving his father, on return journey, he was taken out of his car, blind folded and gagged by three persons near speed-breaker on Naraingarh-Sadhaura road in front of Dehar road and those persons put him in their vehicle. They were 6-7 persons and on pistol point, they threatened to shoot him. At about 9:30 P.M., they took him to a *Kotha* and detained him there. They demanded ₹One Crore as ransom and threatened to kill him otherwise. At about 3:30 A.M., they took him to sugarcane fields by a Jeep and kept him there throughout the day and during night he was taken to another fields. Three persons being called 'Jasbir, Kala and Sikander' stayed with him during night hours, whereas Satta and Pinka used to come with food. Police rescued him and accused Jasbir, Kala and Sikander were apprehended by the police alongwith two pistols.

On 07.01.2008, accused Randeep Singh @ Kala and Jasbir Singh @ Mota suffered disclosure statements (Ex.P-34 and Ex.P-35) and in pursuance of those statements, they got recovered two live cartridges each. PW-29 Inspector (Retired) Jagdev Singh prepared rough sketches (Ex.P-36 and P-38) of said cartridges and converted those into separate sealed parcels bearing seal inscribed as 'SS' and sample parcels were taken into police possession, vide recovery memos (Ex.P-37 and P-39). Rough site-plans (Ex.P-94 and Ex.P-95) of the places of above said recoveries were prepared.

On 08.01.2008, accused Satpal @ Satta and Sandeep @ Bagri were arrested and they suffered disclosure statements (Ex.P-40 and Ex.P-41) respectively. Accused Ajay Kumar was also apprehended on the same day. Ajit Dang (complainant/PW-2) also handed over a C.D. (Ex.MO/1) to PW-10 Sub Inspector Sat Narain, which was containing conversation of accused persons regarding demand of ransom from the complainant, which was taken into police possession, vide recovery memo (Ex.P-6).

On 09.01.2008, accused Jagbir Singh was arrested and he suffered disclosure statement (Ex.P-17). On 12.01.2008, accused Sanjay @ Sanju was arrested, who suffered disclosure statement (Ex.P-29).

On 13.01.2008, accused-Sudhir Kumar @ Kala was arrested and on 14.01.2008, he was interrogated afresh, who during interrogation retracted from his earlier disclosure statement and suffered a fresh disclosure statement (Ex.P-99) and he got recovered a countrymade pistol (Ex.MO/11) alongwith one live cartridge of 12 bore (Ex.MO/12). Rough sketch of the said pistol (Ex.P-58) was prepared and the said pistol alongwith live cartridge were converted into separate parcel and were sealed with the seal bearing inscription 'SN' and was taken into police possession, vide recovery memo (Ex.P-59). Rough site-plan (Ex.P-100) of the place of recovery was prepared.

On the same day i.e. 13.01.2008, accused-Rajiv @ Pinku was arrested and on 14.01.2008 he was interrogated and suffered disclosure statement (Ex.P-61) and got recovered a countrymade pistol .32 bore, which was taken into police possession, vide recovery memo (Ex.P-63). Rough sketch (Ex.P-62) of the pistol was prepared. Demarcation Memo (Ex.P-64)

and rough site-plan (Ex.P-104) of the place of recovery were prepared.

On 14.01.2008, accused-Sikander was interrogated afresh and his disclosure statement (Ex.P-18) was reduced into writing and he got recovered a countrymade pistol .315 bore with one live cartridge. Rough sketch (Ex.P-19) of the pistol and cartridge was prepared and police took the said articles into possession, vide recovery memo (Ex.P-20). Rough site-plan (Ex.P-21) of the place of recovery was prepared. On the same day, accused-Sandeep @ Bagri and Satpal @ Satta were interrogated afresh and they suffered disclosure statements (Ex.P-51 and Ex.P-52) respectively and further in pursuance of their disclosure statements, they got recovered two countrymade pistols .315 bore with one live cartridge each. Accused Sandeep @ Bagri also got recovered a mobile phone make Samsung. The said articles were sealed with the seal bearing inscription 'SB' and were taken into police possession, vide recovery memos (Ex.P-54 and Ex.P-57). Rough sketches (Ex.P-53 and Ex.P-56) of recovered pistols were prepared. Rough site-plans (Ex.P-81 and Ex.P-82) of the places of above said recoveries were prepared.

On 15.01.2008, accused-Sanjay @ Sanju was interrogated afresh, who suffered disclosure statement (Ex.P-42) and got recovered a Bolero Jeep and a countrymade pistol. Rough sketch (Ex.P-43) of the said pistol was prepared and the said pistol alongwith live cartridges were converted into separate parcels and were sealed with the seal bearing inscription 'SN'. The said jeep and pistol were taken into police possession, vide recovery memo (Ex.P-44). Rough site-plan (Ex.P-45) of the place of recovery was prepared.

On the same day i.e. 15.01.2008, accused Jashir @ Mota and Satpal were taken out of the police lock-up and were interrogated, who suffered disclosure statements (Ex.P-96 and Ex.P-97) respectively. Thereafter, accused Satpal, Jashir, Sikander and Randeep were produced before the Area Magistrate and police remand of accused Satpal and Jashir was sought, which was declined by the Court.

On the same day i.e. 15.01.2008, accused Shiv Charan, Sabir and Narinder @ Leela were apprehended and motorcycle bearing registration No.HR-04B-2016 belonging to accused-Shiv Charan was taken into police possession, vide recovery memo (Ex.P-60). Rough site-plan (Ex.P-98) of the place of recovery was prepared.

On 16.01.2008, accused-Sanjay @ Sanju was taken out of the police lock-up and interrogated, who suffered disclosure statement (Ex.P-46) and got recovered a mobile phone make Nokia (Ex.MO/5), which was converted into separate parcel and sealed with the seal bearing inscription 'BS' and the same was taken into police possession, vide recovery memo (Ex.P-47). Rough site-plan (Ex.P-48) of the place of recovery was prepared.

On the same day i.e. 16.01.2008, accused Sabir, Shiv Charan and Narinder @ Leela were taken out of the police lock-up and interrogated, who suffered disclosure statements (Ex.P-22, Ex.P-23 and Ex.P-24) respectively. Accused Shiv Charan got recovered a mobile phone make Classic, which was taken into police possession, vide recovery memo Ex.P-25. Rough site-plan (Ex.P-101) of the place of recovery was prepared. Accused Sabir got recovered a mobile phone make Nokia, which was taken into police possession, vide recovery memo (Ex.P-26). Rough site-plan

(Ex.P-102) of the place of recovery was prepared. Accused Narender @ Leela got recovered one countrymade pistol alongwith four cartridges. Rough sketch of the said pistol (Ex.P-27) was prepared and the said pistol alongwith live cartridges were converted into separate parcels and sealed with the seal bearing inscription 'KL'. The said pistol alongwith cartridges were taken into police possession, vide recovery memo (Ex.P-28). Rough site-plan (Ex.P-103) of the place of recovery was prepared.

On 14.02.2008, accused Vijay was arrested. On 15.02.2008 he was produced before Area Magistrate and remanded to seven days police custody. On 17.02.2008, accused Vijay was interrogated, who suffered disclosure statement (Ex.P-83) and in pursuance of the said statement, he led the police party to the disclosed place where the car was parked and got the said place demarcated, vide demarcation memo (Ex.P-84). Vide memo (Ex.P-85), he also demarcated the place where Ashok Dang (victim/ PW-1) was detained and also led the police party to the tubewell of one Partap in village Mandi, District Kaithal and demarcated the place where Ashok Dang (victim/PW-1) was detained, vide demarcation memo (Ex.P-86).

On 21.02.2008, PW-19 Sub Inspector Pala Ram interrogated accused Vijay who during interrogation stated that he had made a false disclosure statement on 15.02.2008. Fresh disclosure statement (Ex.P-69) of accused Vijay was reduced into writing and in pursuant to said disclosure statement, he got recovered a motorcycle make Pulsar of black colour and further got recovered one polythene from underneath the seat of said motorcycle, wherein one countrymade pistol .315 bore (Ex.MO/23), one

live cartridge (Ex.MO/24), one Nokia 1600 mobile phone and SIM (Ex.MO/27) were found. Rough sketch (Ex.P-70) of the pistol was prepared and the pistol alongwith cartridge were converted into a sealed parcel and sealed with the seal bearing inscription 'PR'. The motorcycle alongwith the parcel of said articles were taken into police possession, vide recovery memo (Ex.P-71). Rough site-plan (Ex.P-72) of place of recovery was prepared.

During the course of investigation, all the recovered pistols and cartridges were got mechanically checked from Armourer and the same were found in working condition.

On 27.03.2008, application was moved before District Magistrate, Ambala, for according sanction under Section 39 of Arms Act for launching prosecution against accused namely Jasbir Singh @ Mota, Randeep @ Kala, Sikander, Satpal @ Satta, Sandeep @ Bagri, Sanjay @ Sanju, Sudhir @ Kala, Rajiv @ Pinku, Narinder @ Leela and Vijay Kumar, under Section 25 of Arms Act. Sanction (Ex.P-79) was accorded by District Magistrate to launch prosecution.

After completion of investigation, final report as envisaged under Section 173 Cr.P.C. (*Challan*) was presented against accused in the Court.

3. Finding a *prima facie* case, accused were charge-sheeted for the commission of offence punishable under Sections 212 and 364A IPC read with Section 120B IPC and Section 25 of Arms Act.

4. To substantiate its case, prosecution has examined PW-1 Ashok Dang (victim), PW-2 Ajit Dang (complainant), PW-3 Deputy

Superintendent of Police (Retired) Jagat Singh (recovery witness), PW-4 Assistant Sub Inspector Devinder Singh (recovery witness), PW-5 Sub Inspector Gurmej Singh (part Investigating Officer), PW-6 Sub Inspector Krishan Lal (recovery witness), PW-7 Head Constable Rakesh Kumar (recovery witness), PW-8 Assistant Sub Inspector Amar Singh (recovery witness), PW-9 Assistant Sub Inspector Surinder Singh (recovery witness), PW-10 Sub Inspector Sat Narain (part Investigating Officer), PW-11 Head Constable Prem Singh (recovery witness), PW-12 Head Constable Parmod Kumar (recovery witness), PW-13 Assistant Sub Inspector Jagbir Singh (recovery witness), PW-14 Constable Pawan Kumar (case property carrier), PW-15 Assistant Sub Inspector Bhupinder Singh (recovery witness), PW-16 Assistant Sub Inspector Angrej Singh (recovery witness), PW-17 Dharam Singh (Head Armourer), PW-18 Dhoop Singh (Photographer), PW-19 Sub Inspector Pala Ram (part Investigating Officer), PW-20 Head Constable Ram Chander (recovery witness), PW-21 Devinder Singh (witness to statement recorded under Section 164 Cr.P.C.), PW-22 Assistant Sub Inspector Chander Bhan (Armourer), PW-23 Inspector Yashwant (member of SIT), PW-24 Kali Charan, Ahlmad (witness to Sanction Order), PW-25 Gurdial Singh (MHC), PW-26 Constable Raj Kumar (Special Reports Carrier), PW-27 Sub Inspector (Retired) Suraj Bhan (part Investigating Officer), PW-28 E/Sub Inspector Randhir Singh (recovery witness) and PW-29 Inspector (Retired) Jagdev Singh (Investigating Officer). After giving up remaining witnesses being unnecessary, prosecution evidence was closed by learned Public Prosecutor for the State.

5. After closure of prosecution evidence, statements of accused as

envisaged under Section 313 Cr.P.C. were recorded, wherein all the incriminating material/evidence were put to them, but they have denied all the allegations levelled against them. Accused had stated that they are innocent and have been falsely implicated in the instant case. They further stated that nothing was recovered from their possession.

It is pertinent to mention here that during the course of trial, accused namely Ajay and Jasbir Singh @ Mota were declared proclaimed offender/person, vide orders dated 19.01.2012 and 23.03.2013 respectively.

6. No evidence has been led in defence by the accused.

7. On appreciation of evidence, learned Additional Sessions Judge convicted and sentenced Randeep Singh @ Kala (appellant herein) and co-accused Sikander, vide judgment of conviction dated 03.04.2013 and order on quantum of sentence dated 10.04.2013, as detailed above, whereas accused namely Satpal @ Satta, Sandeep @ Bagri, Jagbir @ Jagga, Sanjay @ Sanju, Rajiv @ Pinku, Sudhir Kumar @ Kala, Shiv Charan @ Vinod @ Bodha, Sahbir @ Shabir, Narinder @ Leela and Vijay Kumar were acquitted of charges levelled against them.

8. We have heard learned counsel for the appellant as well as learned State counsel and critically examined the evidence available on the record.

9. Learned counsel for the appellant has *inter alia* contended that learned Trial Court has passed the impugned judgment without appreciating the evidence led on the record. He further urged that appellant has been falsely implicated and wrongly convicted on the basis of evidence which is materially discrepant/deficient and does not satisfy the legal requirements.

He further urged that nothing incriminating was recovered at the instance of appellant and as such false recovery has been planted upon him. He further urged that sanction (Ex.P-79) accorded under Section 39 of Arms Act is defective one. He further urged that even otherwise alleged weapon of offence could not be connected with the offence in question. He further urged that appellant was not arrested from the alleged sugarcane fields of village Rahra and even otherwise Ashok Dang (victim/PW-1) did not identify him. He further urged that main legal issue in the present case is whether the appellant could be convicted when he had not been indicted by the victim. He further urged that in view of testimonies PW-17 Dharam Singh, Head Armourer, PW-22 Assistant Sub Inspector Chander Bhan, Armourer and PW-24 Kali Charan, Ahlmad in the Office of Deputy Commissioner, Ambala, no offence under Section 25 of Arms Act is made out against appellant. He further urged that impugned judgment of conviction has been passed by the Trial Court on the basis of conjectures and surmises.

Learned counsel for the appellant while referring to the testimony of Ashok Dang (victim/PW-1) submitted that the said witness has even failed to identify the alleged culprits. He further urged that even otherwise essential ingredients for the commission of offence under Section 364A IPC are not made out. He further urged that since prosecution version is discrepant on material particulars and the fact that it is full of infirmities, thus, prosecution has utterly failed to prove its case beyond shadow of reasonable doubt and consequently judgment of conviction and order on quantum of sentence are liable to be set aside and resultantly appellant is

entitled to be acquitted of charges levelled against him.

10. On the other hand, learned State counsel has vehemently argued that prosecution has proved its case against the appellant by leading cogent and convincing evidence. While rebutting the cause of appellant, he further contended that from the testimonies of PW-1 Ashok Dang (victim), PW-2 Ajit Dang (complainant), PW-3 Inspector Jagat Singh and PW-29 Inspector Jagdev Singh, it is established that victim-Ashok Dang (PW-1) was abducted and threatened to face dire consequences. He further urged that though victim-Ashok Dang (PW-1) has failed to identify the culprits, but the said witness has categorically stated that he was abducted for extorting ransom and there was immediate threat to cause his death. He further urged that PW-3 Inspector Jagat Singh, who got released victim Ashok Dang (PW-1) from the clutches of accused, said witness had identified the accused persons (including appellant) on the spot and in the Court as well. He further urged that at the time of apprehension of appellant, one countrymade pistol .315 bore was recovered from his possession and lateron he got recovered two live cartridges of the same bore and on mechanical examination above said countrymade pistol was found in working condition and further cartridges were found to be live one. He further urged that requisite sanction under Section 39 of Arms Act to launch prosecution of appellant under Section 25 of Arms Act was accorded by District Magistrate. Thus, he contended that appellant has rightly been convicted and sentenced by learned Trial Court for the commission of offence punishable under Section 364A IPC and Section 25 of Arms Act.

11. From the submissions made by the learned counsel for the

parties and materials on record, following questions arise for consideration in this appeal:-

- (i). What are the essential ingredients of Section 364A IPC to be proved beyond reasonable doubt by the prosecution for securing the conviction of an accused under Section 364A IPC?
- (ii) Whether each and every ingredient as mentioned under Section 364A IPC needs to be proved for securing conviction under Section 364A IPC and non-establishment of any of the conditions may vitiate the conviction under Section 364A IPC?
- (iii) Whether the learned Trial Court recorded any finding that all ingredients of Section 364A IPC were proved by the prosecution?
- (iv) Whether there was any evidence or findings by the Court below that the accused had threatened to cause death or hurt to the victim or by his conduct gave rise to a reasonable apprehension that victim may be put to death or hurt?
- (v) Whether there was any evidence or findings by the Trial Court that appellant was apprehended while having countrymade pistol .315 bore and further got recovered two live cartridges of the same bore and the said fire-arm and ammunitions were in working condition?
- (vi) Whether requisite sanction under Section 39 of Arms Act was accorded by the District Magistrate to launch prosecution under Section 25 of Arms Act against the appellant?

12. The appeal having arisen out of judgment of conviction under Section 364A IPC and Section 25 of Arms Act, initially we need to notice the provisions of Section 364A IPC before proceeding further to consider the points for consideration.

13. Section 364A IPC as it exists after amendment is as follows:-

“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 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.”

14. We may now look into Section 364A IPC to find out as to what ingredients the Section itself contemplate for the offence. When we paraphrase Section 364A 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.”

15. The first essential condition as incorporated in Section 364A IPC 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 fulfill 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 word “or” causes hurt or death 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 364A IPC contains a heading “kidnapping for ransom, etc.” The kidnapping by a person to demand ransom is fully covered by Section 364A IPC.

16. 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.

17. The use of conjunction “and” has its purpose and object. Section 364A IPC 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 364A IPC, apart from fulfillment 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”.

18. 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.”

19. After noticing the statutory provision of Section 364A IPC and the law laid down by Hon'ble Supreme Court in **Shaik Ahmed Vs. State of Telangana, 2021(3) RCR (Criminal) 421**, we conclude that the essential ingredients to convict an accused under Section 364A IPC which are required to be proved by 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.

20. 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 364A IPC cannot be sustained.

21. Having considered the submissions made by learned counsel

for the parties and after careful perusal of the record of the case, we are of

the considered opinion that the prosecution evidence is cogent and reliable.

22. From the evidence available on the record, it is clearly established that Ashok Dang (victim/PW-1) while narrating the version has categorically stated that on 31.12.2007 at about 5:45/6:00 PM, on his way back from Village Dehar, when he reached the crossing of Dehar on Naraingarh-Sadhaura road, he slowed down his vehicle (car) due to speed-breaker and then he was intercepted by three persons who got opened his car and took him out of his car and after shutting his face and eyes with clothes, he was made to sit in their vehicle (Taxi). Above said Ashok Dang while narrating his woes further stated that after covering some distance, he was asked to get down from vehicle and not to raise noise and in case he raised noise, he would be in trouble and in the meantime he had heard the noise of fire and from that place he was taken to a *Kotha* tubewell where he was made to stay and on the next day he was shifted to sugarcane fields and in the evening hours he was taken to another sugarcane fields where he was made to stay. Victim-Ashok Dang (PW-1) has categorically stated that despite the fact that he had asked the abductors to set him free but they replied that they would not release him until they receive order from their superiors. Ashok Dang (victim/PW-1) stated that on 04.01.2008 police had come to sugarcane fields and got him released from abductors. Though victim-Ashok Dang (PW-1) did not identify the abductors in the Court, however, he has categorically stated that his statement (Ex.P-1) was recorded by the police wherein he had also got recorded that abductors had demanded ₹ One Crore as ransom from him.

23. At this juncture, it is relevant to discuss the testimony of PW-2

Ajit Dang (complainant), son of victim-Ashok Dang. A bare perusal of testimony of said witness reveals that on 31.12.2007 at about 5:15/5:30 PM, his father (Ashok Dang) had gone to village Dehar to leave his grandfather at their Rice Sheller and at about 6:30 PM, when he contacted his father on mobile phone No.94161-45754 but to no avail. Above said Ajit Dang (PW-2) has categorically stated that he was informed telephonically by their Cashier that his father (Ashok Dang) had already left the Rice Sheller about 15-20 minutes ago. Though he tried his level best to contact his father telephonically but in vain. At about 7:30 PM, some unknown person had picked up the mobile phone of Ashok Dang (victim/PW-1) and conveyed to him (Ajit Dang) that their car bearing registration No.HR-20H-0016 was parked outside the Bus Stand Jagadhri and informed that further course of action would be conveyed to him in the next morning at about 8:00 AM and he was advised not to contact the police. PW-2 Ajit Dang (complainant) stated that application (Ex.P-3) was moved by him to the police to locate the whereabouts of his father. He further stated that on the next day he had received a call on his land-line number 01734-284200 from unknown person who raised demand of ransom of ₹One Crore to release his father (Ashok Dang). Above said witness moved another application (Ex.P-4) to the police, on the basis of which, FIR was registered.

24. Though Ashok Dang (victim/PW-1) has narrated the incident of abduction and during his detention he was threatened to face dire consequences by the abductors but he has failed to identify the culprits. It is pertinent to mention here that victim-Ashok Dang was got released from the clutches of accused by the police party on 04.01.2008. To this effect,

testimony of PW-3 Jagat Singh, the then Inspector/Incharge, CIA Staff, Kaithal, is of utmost importance. Inspector Jagat Singh (PW-3) has categorically stated that on 04.01.2008 while he was posted as Inspector/Incharge, CIA Staff, Kaithal, in respect of rescue of abducted Ashok Dang, a special team was constituted. He further stated that on receipt of secret information about presence of victim-Ashok Dang in the sugarcane fields of village Rahra, District Karnal, intimation in that regard was sent to the senior officers and then he alongwith other police officials reached in the fields of Satpal of village Rahra and the entire field was cordoned off and on seeing the police party, accused namely Jasbir, Randeep (appellant herein) and Sikander tried to flee away but they were apprehended on the spot and from their custody victim-Ashok Dang was got released. He further stated that from the possession of appellant-Randeep, one countrymade pistol .315 bore was recovered and further one countrymade pistol .315 bore and one mobile phone was recovered from the possession of accused namely Jasbir and Sikander respectively. Sketches (Ex.P-7 and Ex.P-8) of above said countrymade pistols were prepared. At this juncture, it is relevant to point out here that in the meantime PW-29 Inspector (Retired) Jagdev Singh, Investigating Officer alongwith police officials also reached on the spot and then victim-Ashok Dang was handed over to him. PW-3 Jagat Singh, the then Inspector as well as PW-29 Inspector (Retired) Jagdev Singh have categorically testified that victim-Ashok Dang was recovered from the custody of accused including appellant-Randeep and both above said witnesses had identified the accused persons in the Court. In this manner, accused/appellant-Randeep @ Kala was duly identified on the spot

of recovery as well as in the Court by the above said witnesses. Thus, in view of testimonies of Ashok Dang (victim/PW-1), Ajit Dang (complainant/PW-2), Inspector Jagat Singh (PW-3) and Inspector (Retired) Jagdev Singh (Investigating Officer/PW-29), learned Trial Court was right in opining that on 31.12.2007 at about 5:45/6:00 PM, in the area of village Dehar on Naraingarh-Sadhaura road, victim-Ashok Dang was abducted by accused persons who were armed with deadly weapons and during the course of his detention at various places during the intervening period spanning over four (04) days, he was threatened to face dire consequences and as such conditions No.(i) and (ii) to invoke essential ingredients for the commission of offence punishable under Section 364A IPC, as detailed in Para No.19 of the judgment, stand established against appellant beyond a shadow of reasonable doubt. It is pertinent to mention here that that once prosecution has successfully proved on the record conditions No.(i) and (ii), as detailed in Para No.19 of the judgment, to bring the case within four corners of Section 364A IPC, there is no need to delve into condition No.(iii).

25. As regards offence under Section 25 of Arms Act, it is observed that at the time of release of victim-Ashok Dang from the clutches of accused, appellant was apprehended on the spot by the police party and from his possession one countrymade pistol .315 bore was recovered and after preparing its sketch, the same was taken into police possession. Further, after his arrest in pursuant to his disclosure statement, appellant/accused led the police party and got recovered two live cartridges of .315 bore which were taken into police possession. Above said countrymade pistol .315 bore and two live cartridges of same bore were got mechanically

checked by PW-17 Dharam Singh, Head Armourer, Police Line, Ambala, who vide his report dated 16.02.2008 (Ex.P-65), found the said countrymade pistol in working condition after testing the same for firing and the cartridges were found to be live one. Vide sanction order dated 27.03.2008 (Ex.P-79) requisite sanction under Section 39 of Arms Act for launching prosecution of accused-Randeep @ Kala under Section 25 of Arms Act was accorded by District Magistrate, Ambala, as the same is evident from testimony of PW-4 Kali Charan, Ahlmad in the Office of Deputy Commissioner, Ambala.

26. In view of the facts and circumstances of the case and the evidence available on record, there is no reason for the false implication of appellant in this case. The evidence led by the prosecution is very much consistent, cogent and worth reliance. The prosecution successfully established the charges against appellant-Randeep Singh @ Kala for the commission of offence punishable under Section 364A IPC and Section 25 of Arms Act. Accordingly, the judgment of conviction recorded by the Trial Court is upheld.

27. With regard to the order on quantum of sentence, it is observed by Trial Court that appellant has already been convicted in another criminal case bearing FIR No.131 dated 31.12.2010 under Section 25 of Arms Act, registered at Police Station Sadar Narwana, District Jind, on 05.01.2012 by learned Sessions Judge, Jind and sentenced to undergo rigorous imprisonment for three years with fine. Thus, appellant is a habitual offender.

28. In view of the above discussion, there is no scope to interfere in the sentence awarded by the Trial Court and as such, order on quantum of sentence is also upheld.
29. As a sequel to above discussion and findings, the appeal, being devoid of any merit, is dismissed.

(Harinder Singh Sidhu)
Judge

(Lalit Batra)
Judge

16.05.2023
jitender

Whether speaking/ reasoned	:	Yes/ No
Whether Reportable	:	Yes/ No