

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.481 of 1996

1. Krishna Yadav, Son of Sitarama Yadav, Resident of Village-Kashmir, P.S.-
Khaira, District-Jamui.
2. Govind Yadav, Son of Biranchi Yadav, Resident of Village-Kashmir, P.S.-
Khaira, District-Jamui.

... .. Appellants

Versus

The State of Bihar

... .. Respondent

with

CRIMINAL APPEAL (DB) No. 499 of 1996

Upendra Yadav @ Teriya Yadav, Son of Anik Rai, Resident of Village-
Kalyanpur, P.S.-Jamui, District-Jamui

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

(In CRIMINAL APPEAL (DB) No. 481 of 1996)

For the Appellants : Mr. Vivekanand Vivek, Advocate
Mr. Rajesh Kumar Sinha, Advocate
Mr. Debesh Kumar Poddar, Advocate

For the State : Ms. Shashi Bala Verma, Addl.PP

(In CRIMINAL APPEAL (DB) No. 499 of 1996)

For the Appellant : Mr. Vivekanand Vivek, Advocate
Mr. Rajesh Kumar Sinha, Advocate
Mr. Debesh Kumar Poddar, Advocate

For the State : Ms. Shashi Bala Verma, Addl.PP

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

and

HONOURABLE MR. JUSTICE JITENDRA KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 01-04-2024

Mr. Rajesh Kumar Sinha, learned counsel representing
the appellants in both the appeals submits that he has already filed
Vakalatnama in Cr. Appeal (DB) No. 499 of 1996 and has got



Vakalatnama from the appellant in Cr. Appeal (DB) No. 481 of 1996 which he would be filing tomorrow i.e. on 02.04.2024.

2. He is permitted to do so.

3. Heard learned counsel for the appellants and Ms. Shashi Bala Verma, learned Additional Public Prosecutor for the State.

4. These two appeals are arising out of the judgment of conviction dated 29th August, 1996 and the order of sentence of the even date by which the appellants have been convicted for the offence under Section 364-A of the Indian Penal Code (hereinafter referred to as the 'IPC') and they have been ordered to suffer a sentence of rigorous life imprisonment by the learned 1st Additional Sessions Judge, Jamui in Session Case No. 590 of 1994 in connection with Khaira P.S. Case No. 113 of 1993 (G.R. Case No. 997 of 1993).

Prosecution Case

5. The prosecution case is based on the written report submitted by one Siya Sharan Singh (PW-5) who is the father of the victim Pankaj Kumar Singh (PW-6). In his written report (Exhibit '1') submitted to the Officer Incharge of Khaira Police Station on 21.08.1993, the informant alleged that on 18.08.1993 at 05:00 PM, his son Pankaj Kumar Singh (PW-6) along with his co-



villager Jaikant Singh (PW-2) had gone to Khaira Bazar to purchase vegetables. At Khaira Chowk, PW-6 met co-accused Bhuneshwar Yadav @ Bhutto Yadav who along with his brother, namely, Upendra Yadav @ Teriya Yadav was on a motorcycle. It is alleged that Bhutto Yadav told Pankaj Kumar to accompany him to Bari Bagh for a work. He assured that they will return soon. The accused Bhuneshwar Yadav @ Bhutto Yadav and his brother were acquainted since the time the son of the informant was studying in Maksudan Singh Residential School at Jamui. Bhutto Yadav is a resident of neighbourhood and both the brothers were regularly visiting the school.

In his written report, PW-5 has further alleged that Bhuneshwar Yadav got Pankaj Kumar Singh to sit on his motorcycle and they went towards Bari Bagh. At the time of his departure, Pankaj Kumar Singh told Jaikant Singh (PW-2) to stay there and he told that he would return very soon. Jaikant Singh (PW-2) waited for a long period but Pankaj Kumar Singh (PW-6) did not return then Jaikant Singh returned home by the bicycle and informed entire things to the informant (PW-5). Jaikant Singh (PW-2) also told the informant that when he was visiting the school to drop the eatables to Pankaj Kumar, he used to see Bhutto Yadav and his brother there and he identified them. PW-5 claimed that he searched his



son everywhere but he was not traceable. Bhuneshwar Yadav @ Bhutto Yadav and his brother both were not available in their house and their family members did not inform anything about them. It is for this reason, the information was being provided to the Police Station on 21.08.1993. The informant (PW-5) claimed that he believed that Bhuneshwar Yadav @ Bhutto Yadav and his brother Upendra Yadav @ Teriya Yadav both had abducted his son for extortion of money and on non-payment of money, they would kill his son. The informant claimed that Bhutto Yadav is a dreaded criminal, therefore, while searching Pankaj Kumar Singh, appropriate legal action be taken against the accused persons.

6. On the basis of the written report (Exhibit '1'), the Officer Incharge, Khaira Police Station registered a formal FIR (Exhibit '5') giving rise to Khaira P.S. Case No. 113 of 1993 under Section 364/34 IPC against Upendra Yadav @ Teriya Yadav and his brother Bhuneshwar Yadav @ Bhutto Yadav.

7. After investigation, police submitted a chargesheet against the accused persons under Section 364-A IPC. Learned Magistrate vide his order dated 19.07.1994 took cognizance of the offence under Section 364-A IPC but after finding that the offence punishable under Section 364-A IPC is session triable, learned Magistrate committed the records to the Court of Sessions, Jamui.



8. In the court of learned 1st Additional Sessions Judge, Jamui, charge was framed under Section 364-A IPC against the appellants, they were explained the charges in Hindi. The appellants denied the charges and claimed to be tried.

9. On behalf of the prosecution, altogether eight witnesses were examined and following exhibits were marked:-

Exhibit ‘1’	Written report submitted by the informant
Exhibit ‘2’	Signature of victim on his statement under Section 164 CrPC
Exhibits ‘2/1’ and ‘2/2’	Signature of Officer-in-Charge on FIR
Exhibit ‘3’	Endorsement in the writing of Ajeet Singh, Officer-in-Charge of Khaira Police Station on the written report of the informant
Exhibit ‘4’	Statement of the victim under Section 164 CrPC
Exhibit ‘5’	Formal FIR
‘X’ (mark for identification)	Photocopy of letter

Analysis of the Prosecution Evidence

10. Ram Kumar Singh (PW-1) is the uncle of the victim (PW-6). He had not seen PW-6 going with Jaikant Singh (PW-2). His statement is based on the information which he claims to have received from Jaikant Singh (PW-2) at 07:15 P.M. on 18.08.1993. In his cross-examination, he has stated that he had gone to Bari



Bagh in search of the victim, his brother Siya Sharan Singh (PW-5) was also with him and they had remained in search of the victim for 19 days in his relatives' places. He has stated that police was informed about return of Pankaj Kumar Singh (PW-6) within one hour and on the same day, police had recorded statement of Pankaj.

11. Jaikant Singh (PW-2) is the co-villager of the informant. He has stated that he had gone to purchase vegetables with Pankaj Kumar Singh and at 05:00 PM, he was at Khaira Chowk. At that very time, Bhutto Yadav, Upendra Yadav @ Teriya Yadav came on motorcycle. Bhutto Yadav called Pankaj Kumar and asked him to come to Bari Bagh whereupon Pankaj sat with him on his motorcycle and went away. This witness has not stated in his examination-in-chief that any force was applied upon Pankaj or that he was in any manner threatened by Bhutto Yadav to compel him to sit on his motorcycle. In his cross-examination, he has stated that except his family members nobody else had seen Bhutto Yadav and others taking away Pankaj Kumar by motorcycle.

12. He has further stated that he met Pankaj after 20 days but when Pankaj returned, this witness had not gone with him



to the police station or Jamui. PW-2 was not aware as to when did Pankaj go to the police station after his return.

13. Yogendra Gupta (PW-3) has been declared hostile as he did not support the prosecution case. In his cross-examination, this witness has stated that his shop is situated at Khaira Chowk and on 18.08.1993 at 05:00 PM, he was there. He denied to have made statement before police that Pankaj had been abducted from Khaira Chowk.

14. Visheshwar Rawat @ Visho Rawat (PW-4) has been tendered by the prosecution for cross-examination. In his cross-examination, he has simply stated that he has a shop at Khaira Chowk and on 18.08.1993 at 05:00 PM, he was at his shop.

15. Siya Sharan Singh (PW-5) is the informant of the case. He is the father of the victim Pankaj Kumar Singh (PW-6). PW-5 has stated in similar manner as has been stated by his brother Ram Kumar Singh (PW-1). He also came to know about the occurrence at about 07:30 PM on 18.08.1993 from his co-villager Jaikant Singh (PW-2). PW-5 has not stated that PW-6 had gone with PW-2 for purchase of vegetables. He was told this fact by PW-2 when he returned home at 07:30 PM approximately. PW-5 has stated in paragraph '3' of his examination-in-chief that he received barren letter on 24.08.1993 by which a demand of Rs.5



lakhs was made and there was a direction not to inform the matter to police otherwise his son would be killed. This witness has stated that he had handed over the original letter to '*Bada Babu*' after keeping a photocopy of the same which he filed in course of evidence. For purpose of identification, the photocopy was marked 'X' but it could not be exhibited in course of trial. According to PW-5, his son Pankaj Kumar returned on 05.09.1993, the defence suggested in course of his cross-examination that there is a property dispute over the property of Yaddu Singh and dispute is between the son-in-law of Yaddu Singh and other family members of Ramdhari Singh. This witness has stated that his grandfather's name is Ramdhari Singh and Yaddu Singh is one amongst the five sons of Ramdhari Singh. He denied the suggestion that he had approached Bhutto Yadav and Teriya Yadav to help him in taking forceful possession of the house property.

16. In his cross-examination, this witness has stated that Khaira is situated at a distance of 3 kilometers from his village and police station is situated in between the way from his house and Khaira Chowk. On the said night, no family member went outside and only on the next day at 07:30 AM (morning), the informant along with his brother Ram Kumar Singh left his village in search of his son. He did not give any information to the police station in



this regard. In his cross-examination in paragraph '9', PW-5 has stated that he had not made statement before police that he had received a barren letter.

17. Pankaj Kumar Singh (PW-6) is the victim and star witness of this case. In his examination-in-chief, he has stated that when he had gone to purchase vegetables with his co-villager Jaikant Singh (PW-2) at Khaira, the accused persons, namely, Bhuneshwar Yadav @ Bhutto Yadav and Upendra Yadav @ Teriya Yadav were standing with their motorcycle parked there. Both of them told him that there is a work and he was asked to come to Bari Bagh. PW-6 went with them on their motorcycle. There is no statement of this witness that at this stage any force was applied on him. He has stated that at Bari Bagh near a bridge about 9/10 persons were standing covering their faces and they pointed revolver telling him that if he would make any *hulla*, he would be killed. PW-6 has thereafter claimed that they blindfolded him and took him on foot. They took him to Kashimar Forest where he was provided food. This witness has stated that Govind Yadav and Krishna Yadav of village Kashimar were present there who provided him food. On the same night, Upendra Yadav @ Teriya Yadav asked him to write a letter to his father demanding Rs. 5 lakhs otherwise he would be killed. He identified the xerox copy



of the letter which was marked 'X' for identification but it could not be exhibited. In paragraph '2' of his examination-in-chief, he has stated that the accused persons took him to different places covering his eyes and on 05.09.1993, they set him free. They took him by car to Mariya village and left him. It was 8/9 pm (night). He reached his house at 10:00 pm. He has stated that when the accused persons dropped him, they left him covering his eyes. In paragraph '3' of his cross-examination, he has stated that after reaching home he did not say anything to anyone, later on, he stated that he described the whole occurrence to his family members. His statement was recorded before the learned Magistrate on 01.11.1993. His signature on the statement has been marked Exhibit '2'. In paragraph '7' of his cross-examination, this witness has stated that he cannot say the name of the shopkeepers who are having shops at Khaira Bazaar where he was standing. He had not seen any known person on way while going to Bari Bagh. He has further stated that the accused persons had given him a copy on which he was made to write and thereafter the copy was torn. He did not remember what were written but he said that about 8-9 lines were written. He has further stated in his cross-examination that after he was dropped by the accused persons, he sat there for sometime, he opened the "*patti*" which was placed on



his eyes but he states that he left that “*patti*” at the said place. He did not see any person of village Mircha, he came on foot from village Mircha and reached at Bariyarpur Road, here also he did not meet anyone. He further reached Dumarkola but there also he did not meet anyone, thereafter Charhara and then Purna Khaira but at all these places he did not meet anyone. He reached Police Station at 11:00 pm on the same night where his statement was recorded but he was not shown the original letter written by him at any point of time.

18. Krishna Nandan Kumar (PW-7) is the Investigating Officer who was posted at Khaira Police Station on 21.08.1993. He has proved the formal FIR and the signature of the Officer-in-Charge as Exhibits ‘2’ and ‘2/1’ respectively. He has stated that he had gone in search of the victim and on reaching Bari Bagh, he had recorded the statement of the shopkeeper Bhuneshwar Modi. This witness has stated that on 25.08.1993 at 6:00 pm, the informant came to the Police Station and produced one letter which was of registered post. The said letter was received by the then Superintendent of Police, Suprabhat Das but the same was never returned. He had recorded statement of the victim on 05.09.1993 and after instruction from the Superintendent of Police, he got recorded the statement of victim Pankaj Kumar Singh in the



court. In his cross-examination, he has stated that in course of his examination, he had not investigated about the number of the motorcycle. He had investigated on the point as to whether in between Khaira Chowk and Bari Bagh, the accused persons were seen with the victim but nothing could be found. He has stated that the seal of the Post Office and the name of sender were not clear on the letter which was given by Siya Singh (PW-5) on 25.08.1993 at the Police Station. The seal showing date of dispatch and receipt were also not clear. He had not recorded in the case diary about the letter inside the envelope. He had also not recorded that Superintendent of Police had taken away the said letter and the envelope.

19. In his cross-examination, the I.O. (PW-7) has stated that PW-5 had not stated before him that when Jaikant Singh gave him information, at that time his brother Ram Kumar Singh was also present. He has further stated in paragraph '13' of his cross-examination that the witness (PW-6) had not stated before him that 9/10 persons who had covered their faces came with revolver and told him that if he would raise *hulla*, he would be killed. PW-6 had not stated that during midnight they had taken him in the *dohat* of Kashimar Forest. PW-6 had not stated to the I.O. that they had served him food and he had not stated that he had seen Govind



Yadav and Krishna Yadav there who had served him food. PW-6 had not stated to the I.O. that Upendra @ Teriya had asked him to write a letter to his father demanding Rs. 5 lakhs otherwise he would be killed. He had only said that the criminals had made him to write a letter in the name of his father. PW-7 has further stated that PW-6 had not told him that on 05.09.1993, the accused persons had left him by their car and he had not said that he came to know about the receipt of his letter which was given in the Khaira Police Station.

20. Birendra Prasad Singh (PW-8) is a formal witness who has proved the formal FIR (Exhibit '5') and signature of the Officer-in-Charge, Khaira Police Station Ajeet Singh (Exhibit '2/1').

Defence Witness

21. After recording of the statement of the prosecution witnesses, the learned trial court recorded the statement of the accused persons under Section 313 Cr.P.C. The accused persons claimed innocence. On behalf of the defence, Bhuneshwar Modi has been examined as DW-1. In his examination-in-chief, he has stated that on 18.08.1993, he was at his shop. His shop is situated at a distance of 10 steps from Bari Bagh Bridge. On the said date in evening, he had not seen persons arriving at motorcycle and



taking away someone towards the forest. His statement was recorded by Police in this regard. He has denied the suggestion that he is in collusion with the accused persons.

22. The learned trial court has, upon examination of the evidences on the record, held that the prosecution has proved the charge levelled against all the three accused persons beyond reasonable doubt. Thus, the learned trial court convicted all the accused and sentenced them as stated above.

Submissions on behalf of the Appellants

23. Learned counsel for the appellants submits that the learned trial court has grossly erred in appreciation of the evidences available on the record. It is submitted that from the prosecution evidences, none of the ingredients of Section 364-A IPC is satisfied. It is submitted that to prove an offence under Section 364-A IPC, the prosecution is required to prove the following facts:-

- (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 maybe 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 government organisation or any other person to do or abstain from doing any act or to pay a ransom. It is submitted that in case of **Shaik Ahmed vs. State of Telangana** reported in (2021) 9 SCC 59, the Hon'ble Supreme Court has observed *inter-alia* that 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 IPC cannot be sustained.

24. Learned counsel submits that in the present case, the evidences on the record would show that PW-6 had gone with the appellants on a mere asking to accompany them to Bari Bagh. He was acquainted with the accused persons and he went on their motorcycle immediately. There is no evidence that PW-6 was put under any threat to his life or he was taken away by applying force. It is submitted that even if for argument sake, it is assumed that the first condition is taken to be present by virtue of taking away of PW-6 by the appellants and keeping him in detention, neither the condition no. (ii) nor the condition no. (iii) would be satisfied. Under condition number (ii), there must be a threat to cause death or hurt to such person or by his conduct the accused



gives rise to a reasonable apprehension that such person may be put to death or hurt. In this case, PW-6 has nowhere stated that at any point of time, he was put under threat to death or hurt. There is no evidence that the conduct of the appellants gave a reasonable apprehension in his mind that he may be put to death or hurt. No hurt has been caused to the victim (PW-6). The so-called barren letter which was marked 'X' for identification could not be proved. The I.O. has stated in his evidence that he has not recorded about the inside letter in the envelope in his case diary. He had not recorded about handing over of the letter to the Superintendent of Police and PW-6 had not stated to him that the accused persons asked him to write a letter demanding Rs. 5 lakhs, failing which he would be killed.

25. Learned counsel further submits that in this case the conduct of the prosecution seems to be highly suspicious. Suggestions have come by the defence that there is a dispute over the property of Yaddu Singh and PW-6 has accepted in his cross-examination that Anandi Singh was murdered in the year 1989 in the flat of the house which is situated near Kalyanpur Mohalla and belong to his ancestors.

26. Learned counsel has further submitted that the conduct of PW-6 is highly suspicious as he did not take the I.O. to



the places where he was kept and it is surprising that after he was left by the accused persons at village Mircha, he travelled all the way to his village for about one and half hour but on way he did not meet a single person. It is submitted that the I.O. (PW-7) has contradicted PW-5 and PW-6 both on material particulars. It is further pointed out that PW-2 who was present with PW-6 on 18.08.1993 at 5:00 pm at Khaira Bazar did not go to the Police Station or Jamui with the victim. PW-5 who is the informant of the case has himself stated in his cross-examination that he had not told to the Police about receipt of the barren letter.

27. On all these grounds, it is submitted that the guilt against the appellants are not proved beyond all reasonable doubts. Prayer has been made to set aside the impugned judgment of conviction and sentence.

Submissions on behalf of the State

28. Both the appeals have been opposed by Ms. Shashi Bala Verma, learned Additional Public Prosecutor for the State. In course of her submissions, learned Additional Public Prosecutor submits that the learned trial court has thoroughly discussed the evidences available on the records and no fault may be found with the appreciation of the evidences. As this Court called upon learned Additional P.P. to demonstrate the materials/evidences



which would satisfy the essential ingredients of Section 364A IPC, keeping in view the judgment of the Hon'ble Supreme Court in **Shaik Ahmed (*supra*)**, learned Additional P.P. could not lay her hand on a piece of evidence which may prove the case of the prosecution beyond all reasonable doubts.

Consideration

29. We have heard learned counsel for the appellants and learned Additional Public Prosecutor for the State. The prosecution evidences have been discussed hereinabove. It is evident from the statement of PW-6, who is the victim and star witness of this case, that he was acquainted with the appellants and on 18.08.1993, he had himself gone with the appellants on their motorcycle on mere asking to come to Bari Bagh for a work. His statement in course of trial that near Bari Bagh Bridge about 9-10 persons who had covered their faces threatened him at the point of revolver not to raise *hulla* otherwise he would be killed is an improvement in course of trial, he is not supported by the I.O. (PW-7). PW-7 has stated in his evidence that PW-6 never told him this fact in course of his statement. PW-7 has been re-examined by the prosecution to contradict him, therefore the evidence of PW-7 carries much evidentiary value.



30. We further find that the statement of PW-6 was recorded by learned Magistrate after about two months on 01.11.1993. From the evidence of PW-7, it is evident that in his statement under Section 164 Cr.P.C. for the first time the victim (PW-6) introduced a story about presence of 9/10 persons near Bari Bagh Bridge. The evidence of PW-6 that he was made to write a letter demanding a sum of Rs. 5 lakhs from his father failing which he would be killed has also been contradicted by the I.O. (PW-7). The informant (PW-5) who is father of PW-6 has himself stated in trial that he had not informed the I.O. about receipt of barren letter. The I.O. has stated that PW-5 came to the Police Station on 25.08.1993 and produced a letter which was by registered post. Thus, on this point also the evidence of PW-5 and PW-7 are inconsistent on material particulars. Moreover, this letter was never produced in course of trial and the I.O. has stated that he had not entered this letter in the case diary and had not recorded that the letter was received by the Superintendent of Police. No evidence showing demand of ransom has been brought in course of trial.

31. In this case, the statement of PW-6 regarding his return would not inspire confidence. I.O. (PW-7) has contradicted him when his attention was drawn towards statement of PW-6 in



this regard. PW-5 and PW-6 are not trustworthy witnesses, hence they are wholly unreliable. No independent witness has supported the prosecution case rather DW-1 who is the shopkeeper having his shop near Bari Bridge has stated that he had not seen persons arriving on motorcycle and taking away someone towards the forest.

Delay in lodging of FIR

32. In the present case, the PW-6 is said to have been abducted on 18.08.1993 but FIR has been lodged on 21.08.1993 i.e. after three days. The PW-5 has tried to explain the delay by saying that he was searching his son every where but he was not traceable. We have discussed the deposition of PW-2, PW-5, PW-6 and PW-7 in details. To this Court, it appears that PW-5 was himself not aware as to where his son had gone. His son (PW-6) was well acquainted with Bhutto Yadav and Upendra Yadav @ Teriya Yadav and for few days PW-5 might have remained under belief that his son (PW-6) would come back, he did not think of abduction of his son but after three days when his son did not return then a written report was lodged with the Police Station giving rise to the present case. The delay in lodging of the FIR in this case indicates that only at a later stage the story of abduction was introduced.



33. In the aforementioned background, this Court would take note of the brief history of the incorporation of Section 364-A IPC in the statute book. In the case of **Shaik Ahmed (*supra*)**, the Hon'ble Supreme Court has dealt with this issue from paragraphs '8' to '15' which are being reproduced hereunder for a ready reference:-

“**8.** Sections 359 to 374 of the Penal Code are contained in the heading “Of Kidnapping, Abduction, Slavery and Forced Labour”. Offence of Kidnapping from lawful guardianship is defined under Section 361 and Section 363 provides for punishment for kidnapping. Section 364 deals with kidnapping or abduction in order to murder.

9. The Law Commission of India took up the revision of the Penal Code and submitted its report, i.e., 42nd Report (June, 1971). In Chapter 16, offences affecting the human body was dealt with. The chapter on kidnapping and abduction was dealt by the Commission in Paras 16.91 to 16.112. Sections 364 and 364-A was dealt by the Commission in Paras 16.99 to 16.100 which are as follows:-

“**16.99. Section 364- Amendments proposed.-** Section 364 punishes the offence of kidnapping or abduction of a person in order to murder him. The maximum punishment being imprisonment for life or for ten years. In view of our general recommendation as to imprisonment for life, we propose that life imprisonment should be omitted and term imprisonment increased to 14 years.



The illustrations to the section do not elucidate any particular ingredient of the offence and should be omitted.

16.100. Section 364-A- Kidnapping or abduction for ransom.- We consider it desirable to have a specific section to punish severely kidnapping or abduction for ransom, as such cases are increasing. At present, such kidnapping or abduction is punishable under section 365 since the kidnapped or abducted person will be secretly and wrongfully confined.

We also considered the question whether a provision for reduced punishment in case of release of the person kidnapped without harm should be inserted, but we have come to the conclusion that there is no need for it. We propose the following section:

‘364-A. Kidnapping or abduction for ransom .— whoever kidnaps or abducts any person with intent to hold that person for ransom shall be punished with rigorous imprisonment for a term which may extend to 14 years, and shall also be liable to fine.’ ”

10. Although the Law Commission has in Para 16.100 proposed Section 364-A, which only stated that whoever kidnaps or abducts any person with intent to hold that person for ransom be punished for a term which may extend to 14 years. Parliament while inserting Section 364-A by Act 42 of 1993 enacted the provision in a broader manner also to include kidnapping and abduction to compel the Government to do or abstain from doing any act or to pay a ransom which was further amended and amplified by Act 24 of 1995.



11. Section 364-A 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.”

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 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 words “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 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 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”.

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.”

34. This Court having noticed the statutory provision of Section 364-A IPC, the law laid down by the Hon’ble Supreme Court and the evidences available on the record, is of the considered opinion that in this case, the prosecution has not led any reliable evidence to prove that it was a case of abduction of PW-6 and he was kept under threat or hurt. The learned trial court has not recorded any finding and could not appreciate the material inconsistencies and contradictions in the prosecution evidences. In result, we find that the impugned judgment of conviction and order of sentence are not sustainable in law.

35. The impugned judgment and order are hereby set aside. The appellants are acquitted of the charge under Section 364-A IPC giving them benefit of doubt.



36. The appellant no.1 Krishna Yadav and appellant no.2 Govind Yadav in Criminal Appeal (DB) No. 481 of 1996 and Upendra Yadav @ Teriya Yadav in Criminal Appeal (DB) No. 499 of 1996 are on bail. They are discharged from the liability of their bail bonds.

37. Both the appeals are allowed.

(Rajeev Ranjan Prasad, J)

(Jitendra Kumar, J)

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