

CRA-D-278-DB-2014 and CRA-D-229-DB-2014 -1-

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CRA-D-278-DB-2014 (O&M)

Date of decision:19.12.2024

Sonu Sharma & others

... Appellants

Vs.

State of Haryana

... Respondent

2. CRA-D-229-DB-2014 (O&M)

Amar Singh

... Appellant

Vs.

State of Haryana

... Respondent

**CORAM: HON'BLE MRS. JUSTICE LISA GILL.
HON'BLE MRS. JUSTICE SUKHVINDER KAUR.**

Present: Mr. B.S. Saroha, Advocate and
Mr. Gautam Dutt, Advocate for the appellant(s).

Mr. Sukhdeep Parmar, Sr. DAG, Haryana.

...

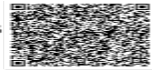
SUKHVINDER KAUR, J.

1. This order shall dispose of **CRA-D-278-DB-2014 (Sonu Sharma & others Vs. State of Haryana)** and **CRA-D-229-DB-2014 (Amar Singh Vs. State of Haryana)**, filed by the accused/appellants, namely, Sonu Sharma, Sanjay Kumar @ Sanju, Bhura and Amar Singh @ Ravi @ Bablu @ Bhallu against verdict of conviction dated 03.01.2014 and order of sentence dated 08.01.2014 passed by learned Additional Sessions Judge, Faridabad, vide which accused/appellant, Sonu Sharma has been held guilty under Section 120-B IPC whereas remaining

**CRA-D-278-DB-2014 and CRA-D-229-DB-2014 -2-**

accused/appellants, namely, Amar Singh @ Ravi @ Bablu @ Bhallu, Sanjay Kumar @ Sanju and Bhura were held guilty under Section 120-B, 364-A/120-B IPC, 420/120-B IPC.

2. The factual scenario as unfolded by prosecution is that on 20.08.2012, complainant Rajinder Sharma got entered DDR No.3 dated 20.08.2012 Ex.PA at Police Post Sector-8, Faridabad in the roznamacha regarding missing of his son Yash Sharma, aged about 6 years on 19.08.2012 at about 4:30 P.M. when he was playing in the street in front of his house. On 21.08.2012, he submitted a written complaint Ex.PC with the police alleging therein that he is resident of village Sihi, Sector-8, Faridabad and runs a taxi stand near Hanuman Mandir, Sector-8, Faridabad. He has one daughter and two sons. His son Yash Sharma, aged about 6 years, who was younger to his elder child and studying in 1st standard in Divine Public School, Sector-9, Faridabad went missing on 19.08.2012 at about 4:30 P.M., when he was playing in front of his house. He searched for his son at several places but could not trace him. He suspected that his son had been kidnapped by some unknown persons and prayed for taking legal action. Description regarding appearance of his son Yash Sharma was given. On the basis of aforesaid application Ex.PC, formal FIR Ex.PC/1 under Section 363 IPC was registered. Investigation was set in motion. During the investigation, statements of witnesses, namely, Shyam S/o Man Singh and Amit S/o Mahender Singh under Section 161 Cr.P.C. were recorded on 22.08.2012, who disclosed that they had seen the missing child Yash Sharma going with a person. Witness

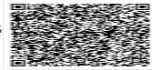
**CRA-D-278-DB-2014 and CRA-D-229-DB-2014 -3-**

Shyam also disclosed that the said person purchased patties for the child from his shop. Complainant Rajinder Sharma got recorded his supplementary statement on 24.08.2012, stating that he received a ransom call for Rs.20 lakhs on his Mobile phone No.9810246982 from mobile phone No.9058889628, upon which offence under Section 364-A IPC was added. After obtaining location of the aforesaid mobile number, police reached at Kanpur in search of the child. On 25.08.2012 when SI Ishwar Singh was present at Oriya, U.P., he received information from Itawa police that the abducted child had been recovered by them and accused had also been apprehended. Thereafter SI Ishwar Singh along with other police officials reached at Police Station Ikdil, District Itawa. After comparison from the photograph in the police file and on disclosing his name by the child, it was found that he was the same child who was abducted from Sector-8, Faridabad. On 26.08.2012, complainant Rajinder Sharma reached at Police Station Ikdil and identified his son Yash. Accused Amar Singh @ Ravi, Sanjay @ Sanju and Bhure were arrested and they suffered disclosure statements. On the basis of disclosure statement of Amar Singh @ Ravi, co-accused Sonu Sharma was also arrested. Recoveries of mobile phones and motorcycle etc. were also effected. Statements of the witnesses were recorded. Rough as well as scaled site plans were prepared. After completion of necessary formalities and investigation, challan was prepared and presented in the Court of learned Illaqa Magistrate, who committed the same to the Court of Sessions for trial.

**CRA-D-278-DB-2014 and CRA-D-229-DB-2014 -4-**

3. Learned trial Court after finding a prima facie case, charge sheeted the accused under Sections 120-B, 364/120-B IPC, 363/120-B IPC, 420/120-B IPC, 467/120-B IPC and 471/120-B IPC, to which they pleaded not guilty and claimed trial.

4. As many as 21 witnesses were examined by the prosecution to prove its case. Statements of accused under Section 313 Cr.P.C. were recorded. Incriminating evidence put to accused was denied by them. They claimed innocence and false implication. Accused Amar Singh pleaded that he was an employee at the taxi stand of complainant. Before the occurrence, complainant had beaten him mercilessly and did not pay salary to him. Due to enmity, he lodged this false case against him. Accused Sanjay pleaded that motorcycle had not been recovered by the police from brick kiln village Mehsar Mau. No ransom call was made from his phone. He is residing at Delhi near Khajuri Khaas for the last 10 years and had not come to Faridabad at any point of time during the period of alleged occurrence. I.D. of Devender Kederia was planted by the police and his mobile was not used in the occurrence. Accused Bhura pleaded that motorcycle was not recovered by the police from brick kiln village Mehsar Mau. No ransom call was made from mobile phone of Sanjay and I.D. of Devender Kederia was planted by the police. His mobile phone was not used in the occurrence. Accused Sonu Sharma pleaded that he has been falsely implicated in this case, being relative of accused Amar Singh @ Ravi. He was not involved in this case in any manner and he knew nothing about ransom and kidnapping of the child.

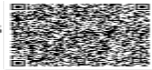
**CRA-D-278-DB-2014 and CRA-D-229-DB-2014 -5-**

In their defence, accused examined, DW1 Om Pratap Singh and DW2 Prabhash Kumar, Clerk.

5. After considering evidence on record, facts and circumstances, learned trial Court held accused Sonu Sharma guilty under Section 120-B IPC whereas remaining accused Amar Singh @ Ravi, Sanjay @ Sanju and Bhura were held guilty under Sections 120-B, 364-A/120-B IPC, 420/120-B IPC and convicted accordingly.

6. Aggrieved of the said decision, accused/appellants have preferred the present appeals against their conviction.

7. Learned counsel for the accused/appellants contended that there is absolutely no admissible evidence against the accused/appellants. Infact it is a case of no evidence. Police fabricated and concocted evidence in order to get undeserved and unjustified credit for allegedly having solved the crime alleged to have been committed in this case. He argued that circumstantial evidence in order to sustain conviction must be complete and incapable of any other hypothesis except guilt of the accused and should form a chain so complete, that there is no escape from the conclusion of the crime being committed by the accused and none else. While relying upon **State of Haryana Vs. Jagbir Singh, 2003 (4) RCR (Criminal) 554; Alamgir Vs. State (NCT, Delhi) 2002 (4) RCR (Criminal) 834** and **Vithal Tukaram More Vs. The State of Maharashtra 2002 (3) RCR (Criminal) 629**, he argued that infact no one witnessed the alleged occurrence in which Yash was allegedly kidnapped for ransom. Essential ingredients of the alleged offence of

**CRA-D-278-DB-2014 and CRA-D-229-DB-2014 -6-**

kidnapping for ransom were not established and that offence of kidnapping for ransom as contemplated under Section 364-A IPC is not proved against the accused. It has not been proved by leading reliable and admissible evidence that accused had made call for demanding ransom. Accused Sonu Sharma was not named by accused/appellant Amar Singh in UP and later on he was falsely implicated being near relative of accused/appellant Amar Singh. He submitted that neither Yash was kidnapped by the accused nor he was recovered from their custody. He argued that no independent witness was joined in the investigation and at the time of suffering of alleged disclosure statements and the recoveries in pursuance thereof makes the same doubtful. Confessional statements it is submitted could not be made the basis for conviction. It was prayed that all the appeals be accepted, impugned judgment dated 03.01.2014 be set aside and appellants acquitted of the offences as charged.

8. We heard learned counsel for the parties and have perused the record carefully and minutely.

9. It is appropriate to refer to the evidence produced on record by the prosecution.

9.1 **PW1 Rajinder Sharma**, complainant in this case, is the father of the child victim. He testified that on 19.08.2012 at about 4:30 P.M. when he was present at the taxi stand, his cousin Dharam Chand informed him that his son Yash was not traceable. They searched for Yash but were unable to trace him. At 8:30 P.M., he went to police station to lodge a report but they told him to find the child at his own. They entered

**CRA-D-278-DB-2014 and CRA-D-229-DB-2014 -7-**

missing report of his son Yash on 19.08.2012 Ex. PA. He again went to police station on 20.08.2012. He further testified that on 24.08.2012 at 9:00 P.M., he received a telephonic call from Mobile No.9058889628 on his mobile No.9810246982 and caller told him that Yash was with them and also asked him not to disclose it to anyone and threatened to kill Yash in case he informed the police. After 4 minutes, he received another call from same number and caller raised demand of Rs.20 lakhs to release Yash. On his asking, caller told him that money be delivered at Baliya and also said that remaining details would follow. He told the caller that he needed 10-15 days to arrange said amount and when he said that he wanted to talk to the child, the caller told him not to worry and said the child was taking meals and asked complainant to inform after 2-3 days and disconnected the phone. On 26.08.2012, accused was arrested by police of Ikdil police station Itawa, U.P. Complainant Rajinder Sharma went there and Yash was handed over to him by the police, vide memo Ex.PB. He also proved his complaint Ex.PC. They came back to Faridabad on 27/28.08.2012. He deposed that Amar Singh had kidnapped his son Yash and Sonu Sharma was giving him the locations. His son Yash told him that one uncle had taken him away and two other uncles had met him on motorcycle. Accused Amar Singh told that Bhura and Sanjay were also with him. Accused Amar Singh, Bhura and Sanjay were present in police station when he reached there and he identified them in Court. Complainant stated that his son completed 8 years on 15.08.2012.

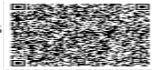
9.2 Minor victim **Yash** was examined as **PW2**. In order to

**CRA-D-278-DB-2014 and CRA-D-229-DB-2014 -8-**

ascertain his credibility and competency to depose, some questions were put to him by Court and his statement recorded thereafter upon finding him to be competent witness. PW2 testified that he was playing outside his house when Amar Singh offered to buy him a kite and patties to eat. He ate patties and then accused Amar Singh made him sit in a rickshaw and then in an auto rickshaw. Thereafter he was taken in a bus by Amar Singh. Then on a motorcycle, he was taken in a jungle. He deposed that there were three persons but he did not know their names. They took him to a house and while pointing out towards accused, he stated that Amar Singh, Bhura and Sanjay offered him rice to eat. They kept him in said house for 10 days. Then his father met him in the police station and brought him back home.

9.3 **PW3 Shyam Singh** deposed that on 19.08.2012 at 04:15 P.M., he was present at his shop of sweets and confectionery. A young man of 30 years along with one child aged about 6-7 years came to his shop for purchasing patties which were given to minor child and then they left the shop. On 29.08.2012, he was called in the police station by the police and he identified the person present there, who had came to his shop on 19.08.2012 along with minor child.

9.4 **ASI Ishwar Singh PW4** associated in investigation of the case with SI Ishwar Singh. He deposed about recovery of minor child by the police of Itawa, calling father of the abducted child and then handing over the child to him. He also deposed about recoveries of mobile phones made from the accused persons which were taken into police possession



CRA-D-278-DB-2014 and CRA-D-229-DB-2014 -9-

and arrest of accused persons in the present case. He also deposed about suffering of disclosure statements by Amar Singh, Sanjay, Bhura Yadav accused EX.PG, PH and PI respectively. He deposed that on disclosure statement of Amar Singh, co-accused Sonu Sharma was arrested, he got recovered Mobile No.9650585379 make Airtel which was taken into possession vide memo Ex.PL. He further deposed that in pursuance of the disclosure statement, Bhura got recovered motorcycle bearing No.UP-75-D-3064 make Yamaha Crux from Jhuggi of M.S. Bhatta.

9.5 **PW5 SI Rohit Tiwari** deposed that on 25.08.2012, he was posted as Incharge, Special Operation Group, at Itawa. They received secret information that Sanjay and Bhura resident of village Sunderpur and Amar Singh resident of village Bamhampur had abducted a minor child from Haryana for ransom and if raid was conducted they could be apprehended at the spot. After receiving aforesaid information, they proceeded in the area of Ikdil, where SO Devinder Diwedi along with police persons met them. He disclosed about said secret information to him. They tried to associate public witness in the raiding party but none came forward. As per the secret information, when they proceeded towards eastern side near railway line, they saw those persons coming and one of them was carrying minor child in his lap. At instance of informer, they apprehended those persons. He enquired about identity of the person carrying the minor child in his lap. He disclosed his name as Amar Singh @ Ravi. Child disclosed his name as Yash S/o Rajinder Sharma resident of Faridabad. He also testified about recovery of mobile phones from the



CRA-D-278-DB-2014 and CRA-D-229-DB-2014 -10-

accused persons.

9.6 **PW6 Sarwan Kumar, Draftsman**, proved scaled site plan Ex.PR prepared by him on 05.09.2012.

9.7 **PW7 Devinder Kumar @ Dhullan** deposed that prior to registration of this case about 1½ years ago, he had applied for sim card of Vodafone Mobile Services and for that purpose had provided voter ID card, which was misplaced. Later on, he had not applied for obtaining any sim card. He deposed that he had not applied for sim card for mobile No.9058889628 and did not make any call from said mobile number. He testified that neither he applied for issuance of said mobile number nor had provided ID for the said purpose.

9.8 **PW8 EHC Satbir Singh** deposed that on 24.08.2012, he had delivered special reports at residence of Illaqa Magistrate and other senior police officers without any delay.

9.9 **PW9 Constable Ravi Kumar** deposed that on 21.08.2012, SI Nand Kishore had handed over the special report to him and the same was delivered to Illaqa Magistrate and other senior police officers.

9.10 **PW10 HC Deepak Kumar** stated that on 19.09.2012, he was posted in Police Line Cyber Cell, Faridabad. On request of SHO, PS Sector-7, Faridabad, he collected call details of mobile Nos.9873642485, 9650586379, 9758300594, 9058889628, 9810246982 for the period of 18.08.2012 to 25.08.2012 from the concerned companies. He proved the called details as Ex.PS.

9.11 **PW11 EHC Mahabir Singh** deposed that on 21.08.2012 he



CRA-D-278-DB-2014 and CRA-D-229-DB-2014 -11-

was posted as MMHC at PS Sector-7, Faridabad. On 27.08.2012 and 06.09.2012, case property of this case was deposited with him by ASI Ishwar Singh and he kept the same in an intact condition.

9.12 **PW12 R.K. Singh Nodal Officer**, Bharti Airtel Ltd. Okhla Phase-III, New Delhi brought the summoned record pertaining to Mobile No.9650585379 in the name of Birbal S/o Fauzdar and produced call details of the said mobile number for the period 20.08.2012 to 30.08.2012 as Ex.PV/1. He also brought the customer application form of Mobile No.9810246982 in the name of Rajinder Sharma S/o Braham Dutt Sharma and proved the customer application copy as Ex.PW and call details of the said mobile number for the period from 20.08.2012 to 30.08.2012 as Ex.PW/1. He also brought on record cell ID location and proved the same as Ex.PW/2 and compliance of Section 65 of the Indian Evidence Act as PW/3.

9.13 **PW13 Nand Kishore SI (retired)** stated that on 21.08.2012 when he was posted as SI in PS Sector-7, Faridabad, he recorded formal FIR Ex.PC/1.

9.14 **PW14 Ramesh Chander, ASI (retired)** deposed regarding entering of DDR No.3 dated 30.08.2012 Ex.PA and submitting of complaint Ex.PC by complainant Rajinder Sharma before him. After making his endorsement Ex.PC/2A he sent the same for registration of FIR.

9.15 **PW15 SI Ishwar Singh** deposed that on 24.08.2012, complainant told him that he had received a ransom call for Rs.20 lakhs

**CRA-D-278-DB-2014 and CRA-D-229-DB-2014 -12-**

and in case of failure, his son would be eliminated. On receiving said call, he went near taxi stand near Hanuman Mandir, Sector-8, Faridabad, where supplementary statement of complainant was recorded and offence under Section 364-A IPC was added. On 25.08.2013, he along with other police officials went to Kanpur U.P. in search of child. Then they received information that child had been recovered by the Itawa police and accused had also been apprehended. Thereafter he along with the police party went there and Rajinder Sharma father of child was also called. On 26.08.2012, accused Amar Singh, Bhure Yadav and Sanjay @ Sanju were formally arrested. Child was handed over to his father. Police of Ikdlil handed over to him parcel containing three mobile phones along with sample seal which was taken into possession vide memo Ex.PE. He visited the place of occurrence from where child had been recovered and prepared site plan Ex.PZ. He further deposed that during interrogation accused Amar Singh, Bhura and Sanjay suffered disclosure statements Ex.PG, PH and PI respectively admitting their involvement in the present case. On 28.08.2012, accused Amar Singh was further interrogated and he suffered disclosure statement Ex.PJ and in pursuance thereof, they led the police party and got demarcated the place of occurrence from where he had kidnapped the child. On the same day, as per disclosure statement of Amar Singh, co-accused Sonu Sharma was also arrested. On 31.08.2012, disclosure statement of Sanjay Ex.PN was recorded. Then they went to village Behasermaw Bhatta and in that village, from one brick kiln, accused Bhure Yadav got recovered one motorcycle bearing registration

**CRA-D-278-DB-2014 and CRA-D-229-DB-2014 -13-**

No.UP-75-D-3064 which was used in the crime and the same was taken in possession vide recovery memo Ex.PP. From the tool box of that motorcycle, accused Sanjay @ Sanju got recovered one voter ID of Devender which was taken in police possession vide recovery memo Ex.PO. He prepared rough site plan of place of recovery of motorcycle Ex.PAA and also deposed about other investigation proceedings conducted by him.

9.16 **PW16 Mahender Bisht, Nodal Officer, Uninor** brought summoned record pertaining to mobile No.9058889628 in the name of Devender Kumar S/o Radhey Sham and call details of said mobile number for the period from 20.08.2012 to 30.08.2012 and compliance of Section 65-B of the Indian Evidence Act as Ex.PAC/2.

9.17 **PW17 Deepak, Nodal Officer, Vodafone Mobile Services Ltd.** brought summoned record pertaining to mobile No.9873642485 and 9758300594 in the name of Jakir Ahmad and Rakesh Kumar respectively. He also produced call details for the period from 01.08.2012 to 31.08.2012 Ex.PAD/1 and call details of mobile No.9758300594 for the period 01.08.2012 to 31.08.2012 Ex.PAE/1 and compliance of Section 65-B of the Indian Evidence Act as Ex.PAE/2.

9.18 **PW18 Constable Pardeep Kumar** brought original record of DDR No.3 and proved the same as Ex.PA.

9.19 **PW19 SI Anup Kumar**, stated that on 25.08.2012, a zero FIR was registered under Sections 364-A/363/420/467/468/471 IPC and in this connection FIR No.412 dated 21.08.2012 under Sections 363/



CRA-D-278-DB-2014 and CRA-D-229-DB-2014 -14-

364-A/420/120-B IPC had already been registered at Police Station Sector-7, Faridabad.

9.20 **PW20 Constable Tejbir Singh** brought record regarding zero FIR dated 25.08.2012 registered at PS Ikdlil Ex.PZ/1.

9.21 **PW21 SI Devinder Kumar Dewati, Crime Branch, Kanpur** deposed regarding receipt of secret information that accused Sanjay and Bhura had abducted minor child for ransom from Haryana and accused were apprehended by him as per secret information and one of them was carrying minor child in his lap. They were apprehended and during their search, mobile phones were recovered.

10. Statements of accused under Section 313 Cr.P.C. were recorded whereas all the incriminating evidence was put to them to which they denied and pleaded innocence.

11. In defence, accused persons examined **DW1 Om Pratap Singh**, who deposed that he knew Sanjay since 10-12 years and had worked under him as a helper. The act and conduct of Sanjay was good and he was not involved in any criminal case. He has been falsely implicated in this case.

11.1 **DW2 Parbash Kumar, Clerk of Office of ARTO, Itawa**, brought record of motorcycle bearing registration No.UP-75-D-3064 and stated that as per record as shown at Sr. No.314 registered owner of the vehicle is Udaiveer Singh S/o Rambir Singh.

12. Accused/appellant Amar Singh @ Ravi, Sanjay Kumar @ Sanju and Bhura have been convicted for offence punishable under

**CRA-D-278-DB-2014 and CRA-D-229-DB-2014 -15-**

Section 364-A IPC, which reads as under:

*"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 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."*

13. Hon'ble Supreme Court elaborately considered the necessary ingredients constituting the offence punishable under Section 364-A IPC in **Shaik Ahmed Vs. State of Telangana, 2021 (3) RCR (Criminal)**. The relevant portion of said judgment is extracted as under:

33. After noticing the statutory provision of Section 364A 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 364A 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



CRA-D-278-DB-2014 and CRA-D-229-DB-2014 -16-

organization or any other person to do or abstain from doing any act or to pay a ransom."

14. Hon'ble the Supreme Court in **Ravi Dhingra Vs. State of Haryana, 2023 (2) RCR (Criminal) 153** held that to prove offence under Section 364-A IPC - kidnapping for ransom, it is necessary to prove not only that such kidnapping and 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 of such death or hurt.

15. Unless conditions as enumerated under Section 364-A IPC are proved, no conviction can be recorded under the said section. The first essential condition as incorporated under Section 364-A IPC is "whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction." In the present case, sufficient evidence has been produced on record by the prosecution that minor child Yash was kidnapped by the aforesaid three accused persons. From testimony of PW1 Rajinder Sharma and PW2 Yash the child victim, it stands proved that minor child was kidnapped by accused Amar Singh, Sanjay Kumar and Bhura. The child victim Yash while appearing as PW2, has given a graphic account of what exactly transpired at the time of incident. He stated that he was playing outside his house. Amar Singh offered to buy him a kite and patties to eat. He ate the patties bought for him and accused Amar Singh made him sit in a rickshaw and then in an auto rickshaw. Then Amar Singh took him in a bus and then took him to jungle on motorcycle. He deposed that there were three persons but he did not know their names. They took him to a house where he



CRA-D-278-DB-2014 and CRA-D-229-DB-2014 -17-

was kept for 10 days. Then his father met him in the police station and brought him back home. Section 361 IPC, defines kidnapping from lawful guardianship as under:-

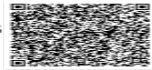
"361. Kidnapping from lawful guardianship.-

Whoever takes or entices any minor under sixteen years of age if a male, or under eighteen 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 lawful custody of such child, unless such act is committed for an immoral or unlawful purpose.*

16. It is thus apparent that first ingredient as contemplated under Section 364-A IPC is completed and duly proved on record. Now it is to be examined whether there is any evidence from which it can be proved that the second ingredient of Section 364-A, i.e. "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", is established. From statements of PW1 and PW2, it is apparent that neither PW1, who is complainant and father of the child victim nor PW2 the victim himself, stated that any of the accused persons threatened to cause death or hurt to child.

**CRA-D-278-DB-2014 and CRA-D-229-DB-2014 -18-**

17. PW1 Rajinder Sharma deposed that he received a ransom call on 24.08.2012 at about 9:00 PM. on his mobile phone from mobile No.9058889628. Caller enquired from him about the incident and told him that Yash was with them. He also asked him not to disclose this fact to anyone and threatened to kill Yash in case he informed the police. After 4-5 minutes, he again received a call from the same number and caller enquired about the number of cars he owned. He told the caller that he had only one Swift car, but caller said that he had several cars and had sold land worth Rs.2 crores and he demanded Rs.20 lakhs to release Yash. He told the caller that he needed 10-15 days to arrange said money. When he expressed his desire to talk to child, the caller told him not to worry and informed that child was taking meals and further told him to inform them after 2-3 days. Thus from statement of complainant itself, it is clear that the kidnappers did not give threat to kill or cause hurt to child rather he was told not to worry and was informed that child was taking meals. When he told them that he would be able to arrange the ransom amount only within 10-15 days, he was not asked to arrange it immediately on the peril of hurt or death of the child. There is nothing in deposition of PW1 that his son PW2 Yash ever revealed any ill-treatment meted out to him or any threat to cause hurt or to kill him being meted out by the persons who kidnapped him. In his cross-examination, this witness spontaneously stated that when Yash was handed over to him by Ikdil police station the child was quite comfortable but then stated that child was frightened. No injury was detected on person of the child and neither was he reported to be traumatized. There is no evidence to

**CRA-D-278-DB-2014 and CRA-D-229-DB-2014 -19-**

this effect.

18. PW2 Yash, the child victim, stated that when he was playing outside his house, Amar Singh offered to buy him a kite and patties to eat. He ate patties bought for him. Then accused took him in a rickshaw, an auto rickshaw and then on a bus and thereafter he was taken to a jungle on a motorcycle. They took him to a house. They offered him little rice which he ate. They kept him confined to that house for 10 days. His father met him at the police station and brought him home. In the examination-in-chief of the child there is not a whisper about extending of any threat to kill or cause hurt by the accused persons. Rather, the victim stated that during his stay in the house, he was being given adequate food. In his cross-examination, he categorically stated that he did not cry or complain to anybody when he was being taken in the rickshaw or other modes of conveyance and he did not invite anybody's attention during this journey. He categorically stated that during the journey and thereafter, he was not beaten or threatened and that during his captivity, he stayed idle.

19. Learned trial Court has thus failed to notice that the victim child was treated well and there is no evidence of any threat to cause death or hurt. Furthermore there is no evidence on record to indicate that conduct of the accused persons was such which gave rise to a reasonable apprehension regarding hurt to or death of victim, as the complainant himself testified that the accused/kidnappers asked him not to worry and informed him that the child was taking meals. When the child was recovered, there were no injury marks on the person of the child. PW3, Shyam Singh, deposed that on

**CRA-D-278-DB-2014 and CRA-D-229-DB-2014 -20-**

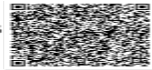
19.08.2012 a young person aged about 30 years along with one child aged about 6-7 years came to his shop for purchasing patties, which were delivered to minor child. From the statement of this witness also, it is clear that the victim was not in a traumatized state, when he came along with the accused to his shop for purchasing patties. PW5 SI Rohit Tiwari stated that child was recovered in his presence and one of the accused was carrying the child in his lap. The victim was not tied up etc.

20. SI, Ishwar Singh, EOW, clearly stated that there was no evidence forthcoming in his investigation that child witness was threatened or beaten. Hon'ble Supreme Court in the case of **Shaik Ahmed (supra)** held that merely because a child of tender age is kidnapped/abducted for ransom, it cannot be presumed that there is an inherent threat to cause death or hurt to such a child and it is imperative that this second condition should be proved on record. While considering its earlier judgment in **Arvind Singh Vs. State of Maharashtra, (2020) SCC online SC 400**, it was held that no such ratio regarding presumption of inherent threat to cause death or hurt as above has been laid down in the case of Arvind Singh. Subsequently, in the case of **William Stephen Vs. State of The Tamilnadu and others, SCC 2024 (5) SCC 258**, Hon'ble the Supreme Court considered the controversy, wherein as per prosecution case a minor child of about 08 years was abducted by the two accused, when he was coming back from his tuition class, on the pretext that his father was going to purchase a car from them, therefore he should accompany them. It was the case of prosecution that a phone call was received from a particular cell phone demanding ransom for

**CRA-D-278-DB-2014 and CRA-D-229-DB-2014 -21-**

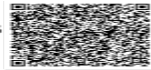
release of the child. It was held by the Hon'ble Supreme Court, in the said case, that when prosecution was not able to connect the alleged demand and the threat with the accused, ingredients of Section 364-A IPC were not proved, inasmuch as it failed to lead cogent evidence to establish the second part of Section 364-A IPC in respect to threat given by the accused to cause death or hurt to such person. Conviction of the accused therein for offence punishable under Section 364-A IPC was held to be unsustainable, hence set aside and appellants convicted for the offence punishable under Section 363 IPC.

21. Learned counsel for the State had vehemently argued that appellant Amar Singh had threatened to kill the child when he called PW1 on 24.08.2012 to demand ransom and that this in itself is sufficient to complete the second ingredient of Section 364-A IPC. On careful scrutiny of the evidence on record, we find this argument being devoid of any merit. PW1 Rajinder Sharma, stated in his cross examination that on 24.08.2012, he received a ransom call from mobile No.9058889628 on his mobile phone No.9810246982, but he did not know the caller and neither was the conversation recorded. Investigating Officer did not ask him to identify the caller or his voice. Perusal of his cross-examination reveals that PW1 while stating that accused Amar Singh had never been his employee, admitted that he was employed as a driver by one Chauhan PW-1, admitted it to be correct, that the car being driven by accused Amar Singh was in the fleet of his taxi stand and that Amar Singh was known to him for about 2½ years prior to the incident. It is to be noted that as per DDR No.3 dated

**CRA-D-278-DB-2014 and CRA-D-229-DB-2014 -22-**

20.08.2012, complainant PWI had recorded that his son had gone away from the house at his own will and despite having searched for him, he could not be found. Thereafter on 21.08.2012, complainant submitted a complaint that a missing report had been recorded on 20.08.2012 but his son could not be found and he feared that he had been kidnapped by some unknown person.

22. PW15 SI Ishwar Singh stated that on 30.08.2012, police party along with accused had gone to district Oriya for further investigation about mobile phone from which the ransom call was received. Near Muradganj turn, accused Amar Singh further suffered disclosure statement Ex.PM. When they came to Oriya they inquired about the sim that from where it had been purchased. Then they came to Ajitmal town. There Devinder Kumar in whose name sim was allotted, was joined in the investigation. In his cross-examination, PW15 SI Ishwar Singh further stated that complainant had informed him that ransom of Rs. 20 lakhs had been demanded through phone call on his mobile on 24.08.2012. He trusted statement of complainant who had shown him his mobile number from which call was received. There was no recording of conversation regarding demand of ransom. There was no such record and evidence except the phone call which was received by the complainant. There was no such plan and any mode of payment informed to PW1 on such date and the caller had not revealed his name and address and that no email, message, SMS was available on mobile. He could not recover the sim from which the alleged ransom call was made. He tried his best but could not succeed as Amar Singh suffered disclosure statement that he had thrown that sim in the drain after breaking it. He could not find

**CRA-D-278-DB-2014 and CRA-D-229-DB-2014 -23-**

the whereabouts of shopkeeper from whom the sim had been purchased.

23. PW7 Devinder Kumar in whose name sim card No.9058889628 was existing, deposed that prior to registration of this case about 1½ years ago, he had applied for sim card of Vodafone mobile services and for that he had provided voter ID card which was misplaced by him. Lateron, he did not apply for obtaining sim card of any mobile number. In his cross-examination, he stated that he did not know on which date his voter ID card had been lost. He did not lodge any report regarding missing of his voter ID card. He did not know who possessed his voter ID card.

24. Thus from the aforesaid evidence, it transpires that sim No.9058889628 was not in the name of any of the accused persons and it was in the name of PW7 Devinder Kumar, who claims that his voter ID card had been lost. Admittedly PW7 did not lodge any report regarding loss of his voter ID card, when it was allegedly lost. He also clearly stated that he did not know who possessed his voter ID card. PWI also stated that on 24.08.2012 when he received ransom call he did not know the caller and did not record the conversation. Investigating Officer did not ask him to identify the caller and his voice. PW15 SI Ishwar Singh stated that he merely trusted statement of complainant that he had received ransom call from the said phone number. It is pertinent to note that the child victim had allegedly been missing since 20.08.2012 in respect to which missing report had first been lodged and thereafter FIR was lodged on 21.08.2012 under Section 363 IPC. In such circumstances, it is opposed to all probability that the calls could not be recorded, either at the instance of the police or by the complainant

**CRA-D-278-DB-2014 and CRA-D-229-DB-2014 -24-**

himself.

25. Admittedly the sim card from which the ransom call was allegedly made was not recovered. Even said shop was not traced from where the said sim card had been allegedly purchased by the accused persons by using voter ID of PW7 Devinder Kumar. In this factual matrix, ransom call allegedly received by the complainant on 24.08.2012 cannot be connected with the accused persons. It is also not proved by the evidence on record that accused had obtained sim card No.9058889628 after using voter ID card of PW7 which he had allegedly lost. Offence under Section 420 IPC against the accused is hence not proved on record beyond reasonable doubt.

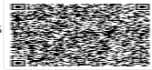
26. Evidence on record qua accused Sonu Sharma, who has been held guilty under Section 120-B IPC has been carefully considered by us. It has been held by learned trial Court that accused Sonu Sharma was giving information to accused Amar Singh on his mobile phone No.9873642485 from mobile phone No.9650585379 regarding activities of police in respect to search of missing child, Yash. Learned trial Court relied upon evidence produced by the prosecution in the form of disclosure statement of co-accused Amar Singh Ex.PJ and call details Ex.PS. In this context, learned trial Court also held that contention raised on behalf of accused Sonu Sharma that mobile No.9650585379 was not in his name and was in the name of Birbal, was not tenable, as accused have failed to examine said Birbal to prove that such mobile number was not being used by Sonu Sharma and was being used by said Birbal.

27. From the evidence on record, it transpires that Mobile No.

**CRA-D-278-DB-2014 and CRA-D-229-DB-2014 -25-**

9650585379 is not in the name of accused Sonu Sharma but in the name of one Birbal. There is no evidence to indicate as to who is this Birbal or his connection with the appellant Sonu. He was not examined as a prosecution witness in order to prove that aforesaid phone number was being used by Sonu Sharma and not by him.

28. Even if it be presumed for the sake of argument that aforesaid phone number was being used by Sonu Sharma there is no such evidence on record that the said phone calls were made by Sonu Sharma to Amar Singh for the purpose as alleged. It is an admitted fact that Sonu is closely related to co-accused Amar Singh, thus probability of telephonic conversation between them cannot be ruled out. In the absence of any evidence, it cannot be presumed that he had been informing Amar Singh regarding activities of the police regarding search of missing child Yash. PW4 ASI Ishwar Singh stated during his cross-examination that on disclosure statement of Amar Singh recorded on 28.08.2012 in police station, name of Sonu Sharma came to light. He admitted that disclosure statement of Amar Singh was also recorded on 27.08.2012 in the police station by the Investigating Officer and on 27.08.2012, Amar Singh did not disclose name of accused Sonu Sharma, which creates strong doubt regarding involving him in the present case at a later stage. It is also to be noted that even as per prosecution case, except Amar Singh, none of other co-accused stated regarding his involvement in the commission of crime. PW1, Rajinder Sharma, complainant stated in his cross-examination that police had told him that Sonu Sharma had assisted other accused persons by supplying information regarding their movements

**CRA-D-278-DB-2014 and CRA-D-229-DB-2014 -26-**

at Faridabad. He categorically stated that he had not seen Sonu Sharma in the area or around his house. He never received any call on his phone, his wife's phone or on the phones of other family members from Sonu Sharma. He had never been informed by any of the neighbours of the locality, that Sonu Sharma had been inquiring about him or his family.

29. PW4, ASI Ishwar Singh admitted in his cross-examination that no other co-accused disclosed name of Sonu Sharma in his disclosure statement and that no conversation on phone between Sonu Sharma and Amar Singh was recorded nor any CD was prepared by him. He further stated that their conversation was not heard by police by using latest instruments. He did not know in whose name, the mobile phone recovered from accused Sonu Sharma was purchased and they did not make any effort to investigate about its owner. They did not verify that this phone number was being used by accused Sonu Sharma, by making call from this number to any other person. PW10 Deepak Kumar HC No.2551 admitted it to be correct during his cross-examination that as per call details Ex.PS, pertaining to calls of Sonu Sharma, there was no mobile number and ID of Sonu Sharma in the said call details. As per prosecution version, it was always Amar Singh who called Sonu and Sonu Sharma never made any call to Amar Singh. Hence in the given factual matrix, argument that once calls from Amar Singh on the cell phone number statedly used by Sonu are proved, his involvement in commission of offence should be presumed, is totally devoid of any merit, hence rejected.

30. Sufficient cogent evidence is not available on record to prove

**CRA-D-278-DB-2014 and CRA-D-229-DB-2014 -27-**

role of accused Sonu Sharma within the ambit of Section 120-B IPC. Perusal of prosecution evidence on record reveals that there is no admissible evidence against Sonu Sharma and he has been nominated as accused in this case basically on the bedrock of disclosure statement of co-accused Amar Singh. Finding of learned trial Court in the given facts and circumstances is thus unsustainable. Offence under Section 120-B IPC is not proved against accused/appellant Sonu Sharma beyond reasonable doubt.

31. It is to be noted that though offence under Section 364-A IPC has not been proved beyond doubt but offence of kidnapping has been fully established qua appellants/accused Amar Singh, Sanjay Kumar and Bhura who are liable to be convicted under Section 363 IPC. Conviction and sentence imposed upon said appellants for the offence punishable under Section 364-A IPC is thus set aside and they are held guilty of offence punishable under Section 363 IPC. Section 363 IPC provides for punishment which is imprisonment of either description which may be extended to seven years as well as imprisonment of fine. In the given facts and circumstances, appellants Amar Singh @ Ravi, Sanjay Kumar @ Sanju and Bhura are convicted under Section 363 IPC and sentenced to undergo RI of 7 years and fine of Rs.25,000/- each and in default thereof, to undergo further imprisonment of 4 months. Appellant Sonu Sharma is acquitted of the charges against him.

32. It was brought to our notice that appellant Sanjay Kumar @ Sanju and Bhura S/o Rakesh Yadav at the time of suspension of their sentence on 27.01.2022 and 25.02.2022 respectively, had already undergone

CRA-D-278-DB-2014 and CRA-D-229-DB-2014 -28-

actual custody of 8 and 9 years respectively at that juncture. As per custody certificate of May, 2022 available on record, in respect to appellant Amar Singh @ Ravi Bablu @ Bhallu, he had undergone actual imprisonment for a period of 8 years, 5 months and 2 days as on 09.05.2022. Appellant Amar Singh @ Ravi @ Bablu @ Bhallu is still in custody. As he has undergone the sentence, it is directed that said appellant Amar Singh @ Ravi @ Bablu @ Bhadu be released forthwith, if not wanted in any other case. Bail bonds of the others be discharged.

33. Appeals filed by appellants Amar Singh, Sanjay Kumar and Bhura are partly allowed to the extent as above and appeal by appellant Sonu Sharma is allowed.

34. Pending application(s), if any, also stand disposed of accordingly.

(SUKHVINDER KAUR)
JUDGE

(LISA GILL)
JUDGE

19.12.2024
harjeet

1. Whether speaking/reasoned?

Yes/No
2. Whether reportable?

Yes/No