

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL APPEAL (DB) No.1238 of 2016

Arising Out of PS. Case No.-134 Year-2010 Thana- BARIYARPUR District- Munger

Chandan Kumar Son of Late Sital Rajak Resident of Village-Pariya,
Bariyarpur, P.S. Bariarpur, Distt- Munger Appellant/s

Versus

The State Of Bihar Respondent/s

Appearance :

For the Appellant/s : Mr. Manoj Kumar Singh, Adv.

Mr. Naresh Dass, Adv.

For the Respondent/s : Mr. Sri Ajay Mishra

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

and

HONOURABLE JUSTICE SMT. SONI SHRIVASTAVA

CAV JUDGMENT

(Per: HONOURABLE JUSTICE SMT. SONI SHRIVASTAVA)

Date : 16-05-2025

The present appeal under Section 374(2) read with Section 389(1) of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.') has been preferred against the judgment and order of conviction and sentence dated 28.09.2012 and 29.09.2012 respectively, passed by the Court of Adhoc Additional Sessions Judge-IV, Munger in Sessions Case No.261 of 2011, arising out of Bariarpur P.S. Case No.134 of 2010, whereby and whereunder the appellant has been convicted under Section 364A of the Indian Penal Code (hereinafter referred to as 'IPC') and has been sentenced to undergo rigorous imprisonment for life with fine of Rs.10,000/- and in default thereof, he has been directed to undergo simple imprisonment for six months.

2. The short facts of the case based on the self-statement of the informant recorded on 24.12.2010 at 10.00 pm is that on 24.12.2010 at 8.00 pm the informant Vishwanath Ram,. S.I., P.S.-



Bariarpur, District-Munger received a secret information that five-six miscreants have kidnapped a boy and kept him in captivity at village-Paria for the purpose of demanding ransom, with the threat that if the ransom amount would not be paid till night then he would be done to death. After making an entry of the said secret information in the station diary, the informant proceeded to village-Paria along with police personnel. As soon as the informant and the members of the raiding party reached near the house of one Arun Yadav, they heard a groaning sound of a boy whereupon they saw 4-5 persons fleeing away in the torch light and upon chase, one person was apprehended by the informant who was sitting besides the boy who was crying in pain. However, the other persons taking advantage of the darkness and managed to flee away.

3. It is further alleged that apprehended person aged about 25 years disclosed his name as Chandan Kumar (appellant) and the other boy aged about 21 years, who was the victim, disclosed his name as Dayanand Kumar. He disclosed that the apprehended accused along with other 3-4 persons had kept him in confinement in the Gali (lane) for the purpose of extorting money and were even assaulting him. He got to know the names of the other accused persons as they were taking



names of Chandanwa, Pankaj, Bhutkani, Golu and Vicky. The informant further alleges that in the presence of two villagers, namely, Nawal Kishore Yadav and Chamal Lal Yadav the accused Chandan Kumar was searched whereupon, two cheques of SBI of an amount of Rs.40,000/- and 20,000/- in the name of Chandan Kumar issued by Dayanand Kumar (victim) on 24.12.2010, was recovered from the left pocket of the shirt of the accused Chandan Kumar. Besides, a samsung mobile, school identity card of Chandan Kumar, Airtel Sim were also recovered and a seizure list was prepared signed by the witnesses. The victim Dayanand Kumar further disclosed that he deals in the business of paddy and has a rice mill. He has also revealed that the accused Chandan Kumar and his accomplices assaulted him with the back portion of the weapon, by elbow, fists and slaps on his eye, chest and knee due to which he got injured. They even tried to choke him by pressing his neck. The victim further stated that they even threatened his family members at Lakhisarai of dire consequences in case Rs.40,000/- was not paid till the night. It is stated that on 23.12.2010 i.e. a day prior to the occurrence while the informant was going to his maternal uncle's house in between 11.00 to 11.30, he was pulled into a lane by the accused persons and upon protest, he was confined



in a room within a boundary in the lane and then the accused persons had snatched away other articles from him including some cash, mobile and gold chain. Further disclosure made by the victim is that he even managed to escape from the clutches of the miscreants and ran to his grandmother's house but Pankaj Yadav and Chandan Kumar went and threatened his grandmother and she in fear, let the victim go out of house. It was stated by the victim that a total demand of Rs.1 lac was made from him, out of which, they had forcibly taken his signature on two cheques amounting to a total tune of Rs.60,000/- and then they had further demanded Rs.40,000/- from his family members.

4. On the basis of the aforementioned farbdeyan, Bariarpur P.S. Case No.134 of 2010 was instituted on 25.12.2010 under Sections 364A, 384, 387, 342, 323 and 414 IPC. The FIR was instituted against the present appellant Chandan Kumar and four others. After investigation, charge-sheet was submitted on 22.02.2011 against the appellant and two others being Vicky and Rahul while the investigation remained pending against two other co-accused Pankaj Yadav and Bhutkani Yadav, under Sections 364A, 323, 504, 506 and 414 IPC. Thus, the provisions relating to extortion and wrongful



confinement were done away with. Whereafter, cognizance was taken vide order dated 23.02.20211 against the three charge-sheeted persons under the same Sections. Case was committed to the court of Sessions on 11.04.2011 and the charges were framed on 23.07.2011 under Sections 364A, 323, 506 and 414 IPC against the appellant and two others by the learned trial court.

5. The prosecution, in order to substantiate its case, examined 8 witnesses during the course of trial, they being PW-1 Chamak Lal Yadav (formal witness), PW-2 Nawal Kishore Yadav (formal witness), PW-3 Ramji Paswan (Chowkidar), PW-4 Jugal Singh (SAP Jawan-cum-member of raiding party), PW-5 Dayanand Kumar (the victim), PW-6 Pancha Devi and PW-7 Mamta Devi (grandmother and maternal aunt respectively of the victim), who were both declared hostile by the prosecution, and PW-8 Vishwanath Ram who is the informant as well as the Investigating Officer (in short 'I.O.') of the case.

6. Mr. Manoj Kumar Singh, learned counsel, arguing on behalf of the appellant, at the outset, submits that the appellant has been falsely implicated in this case due to some oblique motive and the present case has been lodged in collusion with the police. Learned counsel for the appellant has challenged the



veracity of the seizure list on the ground that the seizure list witnesses, PW-1 and PW-2, although independent, have stated in their deposition that they have signed on blank papers. In such view of the matter, the very sanctity of the seizure list stands violated. While challenging the authenticity of the seizure list, it has further been submitted that the seized articles, being the cheques in question, have not been marked as exhibits and on account of such non-marking of the same as exhibits, it has been contended that the entire process of search and seizure is not in accordance with law. This leads to his submission that, as a matter of fact, nothing was seized and an absolutely fabricated story has been created. Learned counsel has relied upon the following cases in support of his contention that in absence of proper proof of seizure, coupled with non-production of seized articles, the same amounts to non-seizure of the article:-

(1) **The State of Punjab Vs. Balveer Singh** reported in (1994) 3 SCC 299.

(2) **Noor Aga VS. State of Punjab** reported in (2008) 16 SCC 417.

(3) **Khet Singh VS. Union of India** reported in (2002) 4 SCC 380.

7. In this context, learned counsel for the appellant has



submitted that the factum of seizure also does not get any support from the independent witnesses and further in view of the fact that no search of the persons conducting the search of the accused also amounts to violation of Section 100 Cr.P.C. Thus, the question of demand of ransom and the payment thereof is non-existent.

8. The further submission of learned counsel for the appellant is with respect to the fact that some crucial and material witnesses of the case have not been examined. He refers to the witnesses like Parmanand, the brother of the victim to whom the ransom call was made and also refers to one Anand Sharma, the maternal uncle of the victim, to whose house allegedly, the victim had fled to, have not been examined. It is stated that these witnesses were capable of bringing the real facts to light, however the prosecution has deliberately withheld them.

9. It has further been submitted on behalf of the appellant that the evidence of the prosecution witnesses are replete with inconsistencies and contradictions. He refers to the conflict between the statement of the informant (I.O.-PW 8) and the Chowkidar (PW-3) who is a member of the raiding party, with regard to the time of reaching the place of occurrence and



has, thus, also submitted that the time of occurrence has not been established by the prosecution. Moreover, it has also been contended that if, as per the prosecution version, there was a crowd assembled at the place of occurrence, why no independent witness was examined.

10. With regard to the place of occurrence, learned counsel for the appellant has strongly contended that the same is also not proved as the I.O. (PW-8) himself makes a reference to three place of occurrence and further the non-recovery of any weapon from the place of occurrence despite the prosecution case of the appellant being apprehended on the spot, also makes the place of occurrence doubtful. Learned counsel for the appellant has raised serious doubts upon the veracity of the testimony of the victim (PW-5) and contends that the same is totally unreliable since his entire story of going to the house of his grandmother does not get any support from PW-6 and PW-7 who are the grandmother and maternal aunt of the victim.

11. It has been very emphatically argued on behalf of the defence that the entire case of the prosecution becomes a suspect taking into consideration the fact that the informant himself took over the charge of investigation and became the I.O., despite the availability of other police personnel who could



have investigated the present case. Besides, there appears to be no reasonable ground as to why the S.H.O. became the informant himself while the victim (PW-5) was completely conscious to give any statement. The role of the informant/I.O. has also been dubious in view of the fact that his reaching the place of occurrence where the victim was allegedly confined upon a confidential information, does not inspire confidence. The informant/I.O. even talks about a Sanha recorded by him in the station diary before he left for the place of occurrence but the same has not been brought on record. He states that he neither remembers the SD entry number nor is the same indicated in the case diary. The entire genesis of the occurrence is, thus, put to challenge by the defence.

12. On all the above-mentioned grounds, learned counsel for the appellant has submitted that the prosecution has failed to prove its case beyond all reasonable doubts and in the present circumstances benefit of doubt ought to be given to the appellant. To buttress his submission, he has relied upon the following judgments:-

(1) **Kuldeep Singh Vs. State of Punjab** reported in (2010) 14 SCC 615.

(2) **Sujit Paswan VS. State of Assam** reported in



(2013) 12 SCC 406.

(3) Ramesh Harijan Vs. State of UP reported in
(2012) 5 SCC 777.

(4) Vijay Shankar Vs. State of Haryana reported in
(2015) 12 SCC 644.

13. Learned APP for the State, Sri Ajay Mishra, has totally controverted the submissions made by the learned counsel for the appellant and has stated that the factum of threatening the victim is established by the assertion made by the victim (PW-5) himself in paragraph 3 of his deposition. It is further submitted that the prosecution case of demand of ransom has also been proved by the victim himself and the defence has failed to dispel the credibility of this witness. Further, it has been stated that the very fact of the appellant being arrested on the spot finds support from the evidence of PW-3, PW-4 and PW-8 and the seizure list prepared in this case (Exhibit-1) makes it evident that the cheques stood in the name of the appellant Chandan Kumar and were issued by the victim Dayanand Kumar (PW-5). Paragraph 11 of the deposition of the victim (PW-5) also confirms that the cheques stood in the name of the appellant. The defence has not been able to come out with any explanation, or any other theory as to how the said cheques



were recovered from the possession of the appellant. On the strength of such overwhelming evidence, learned APP for the State contends that the prosecution case against the appellant stands proved.

14. Besides hearing learned counsel for the parties, we have minutely perused both the evidence i.e. oral and documentary. Before proceeding further, it would be necessary to cursorily discuss the evidence.

15. Out of the 8 witnesses examined on behalf of the prosecution, PW-1 Chamak Lal Yadav and PW-2 Nawal Kisore Yadav are formal witnesses who have proved the seizure lists Exhibit-1 and Exhibit-1/A by identifying their signatures thereupon. However, it would appear from the cross examination of both these witnesses that they have signed on blank papers. PW-6 Pancha Devi and PW-7 Mamta Devi are the grandmother and maternal aunt of the informant respectively and both of them have not supported the prosecution case, hence have been declared hostile by the prosecution. Nothing substantial has been elicited even upon their cross examination either in favour of the prosecution or defence but for the fact that they had not given any statement before the police and a denial of the facts put to them with regard to the occurrence.



Their evidence is thus of no consequence and do not need a discussion. We are thus left with the evidence of PW-3 Ramji Paswan (Chowkidar), PW-4, Jugal Singh (Sap Javan) who are members of the raiding party, PW-5 Dayanand Kumar (informant himself) and PW-8 Bishwanath Ram who both are the informant as well as the Investigating Officer of the case.

16. PW-3 (Ramji Paswan) is a Chowkidar and is also a member of the raiding party. He has deposed that on 24.12.2010 at around 4:00pm, the SHO got an information that two boys have been kidnapped and have been kept in Pariya village and upon such information when they went into the lane of one Arun Yadav, they found a boy groaning in pain and 4-5 persons were fleeing away. One Chandan Rajak (appellant) was however, apprehended who along with the victim Dayanand Thakur were brought to the police station and the seizure lists were prepared at the police station of a mobile and cheque book which was recovered from the said Chandan Kumar upon search in the presence of Chowkidar, Nawal Kishore Yadav (P.W.-2), Raghubir Paswan (not examined) and Sap Jawan. He further adds that Chamak Lal Yadav (PW-1) and Nawal Kishore Yadav (PW-2) were also there. In the cross-examination, the witness has expressed his ignorance about the source of information and



has only stated that he had reached the place of occurrence along with the SHO around 4:50pm where they apprehended Chandan Kumar (appellant) and Dayanand Thakur (victim) who were brought to the police station and all documentation were done at the police station. He makes a categoric statement that the seizure list was not prepared at the place of occurrence. It would further appear from his cross examination that the SHO had searched Chandan Kumar, however, the SHO had not got himself searched prior to searching the appellant. He has denied the defence suggestion that as a matter of fact, nothing was recovered from the place of occurrence. It has lastly been stated that Arun Yadav had not come to the place of occurrence and he was not familiar with any of the persons who had been apprehended or who had managed to escape.

17. One Jugal Singh, who is a Sap Jawan at Kharagpur was examined as PW-4 and in his examination-in-chief, he has reiterated the prosecution story as stated in the FIR. However, he has stated that two persons were apprehended on chase, one being Chandan Kumar (appellant) and the other being Dayanand Kumar, the victim (PW-5). They were both brought to the police station. In his cross examination, he has stated that there was no population where the two persons were



caught and no documents were prepared at the place of occurrence.

18. PW 5, Dayanand Kumar happens to be the victim of the present case and his version is that the occurrence relates to an incident which took place on 23.12. 2010 when he was going to Pariya village to the house of his maternal uncle, namely, Anand Sharma, when all of a sudden 4-5 boys surrounded him and started taking him towards Pariya Basti on gun point. It has further been stated that his hands, legs were tied and he was confined within a boundary and upon being questioned with regard to his occupation, he stated that he is engaged in the sale and purchase of paddy. He has further stated that he had a cheque book and the accused persons who were taking each other names as Chandan, Pankaj, Golua, Murani, etc. forcibly got two cheques of an amount of Rs. 40,000/- and Rs. 20,000/- issued by him. The witness, however, fled away in the night, after finding an opportunity, to the house of his grandmother. The accused persons also reached there to catch him and threatened his grandmother and made a demand of Rs. 1,00,000/-. He was pulled out of his house by the accused persons and assaulted due to which he received injuries on his stomach, mouth, hands, chest and neck. They even called the



brother of this witness on mobile and asked him to come with an amount of Rs. 40,000/- by evening or else his brother would be done to death. This occurrence, according to him, took place on 24.12.2010 and in the meantime, the police came in the evening and recovered him and apprehended Chandanwa (appellant). Upon inquiry by the police as to why he was carrying a cheque book, he stated that since he is engaged in sale and purchase of paddy and it is difficult to keep cash, he carries his cheque book. A seizure list of the cheque book was made, whereupon he signed and has identified his signature on the same which has been marked as Exhibit-2.

19. In the cross examination, this witness has stated that he is engaged in the business of sale and purchase of paddy since 01.01.2009. However, he does not know the names of his customers as it is his brother, Parmanand (not examined) who is mainly responsible and it is at his instance that he buys and sells the paddy. He further clarifies that the cheque book stands in his name as he has taken loan from State Bank of India. The further deposition of this witness is that he only knows his maternal uncle at Bariyarpur and does not know others. He denies to be friendly with any of the accused persons and also denies a suggestion that he is involved in committing loot in the train and



there are many cases pending against him. He has also stated that there is no proof of the fact that he had come to Bariyarpur on 23.12.2010 around 10:00 am for the purpose of sale and purchase of paddy. The witness further states that he is a student of B.A. Part-III and he had stated before the police that the accused persons had assaulted him whereafter the SHO had got him treated at the hospital. According to him, the police had searched him as well as Chandan Kumar at the place of occurrence. He does not know the names of the other accused persons but claims to identify them. The witness next states that Chandan Kumar was apprehended in the evening of 24.12.2010 and his watch and mobile had been snatched away by the accused persons. It is stated that cheque of Rs. 40,000/- issued by him was in the name of Chandan Kumar while the cheque of Rs. 20,000/- was only signed by him with date but was not issued in any name and that too as a consequence of the assault made upon him. He accepts that his signature was not proper and he does not remember the number and further the entire cheque book was deposited before the police. The witness has further stated that the policemen, 5-6 in number, had come to the place of occurrence on foot and several persons had assembled at the place of occurrence.



20. PW-8 Bishwanath Ram, SHO of Bariarpur police station is both informant and Investigating Officer of the present case. It has been stated by him that upon receiving an information with regard to a boy having been kidnapped and kept in confinement by the accused persons, he left for the place of occurrence for verification of the said fact and in torch light, saw two boys fleeing away, one who was crying in pain, who disclosed his name as Dayanand Kumar (victim) and the other apprehended boy disclosed his name as Chandan Kumar (appellant). It is further stated that villagers arrived at the place of occurrence and the said Chandan Kumar was searched in the presence of independent witnesses and two cheques of Rs. 40,000/- and Rs. 20,000/- were recovered from his pocket. With respect to the said cheques, it was stated by Dayanand Kumar(PW-5) that the same were forcibly taken by way of ransom and a demand had also been made from his house for more money, threatening them of dire consequences. The witness has further stated that the seizure lists were duly prepared and he has identified his signature on them which has been marked as Exhibit-1/2 and 2/1. The accused Chandan Kumar admitted his guilt upon inquiry and stated that he had got the cheques issued from Dayanand Kumar and had made



demand for money as well. He further admitted that his other accomplice had apprehended Dayanand Kumar, kept him confined in a room on the boundary and besides demanding money from his family, the mobile and the watch of Dayanand Kumar was also taken away. The witness has identified his self-statement which has been marked as Exhibit-3(with objection).

21. The informant, PW-8, himself took charge of investigation on 24.12.20210 and recorded the confessional statement of Chandan Kumar, who disclosed the names of his companion as Pankaj Kumar, Murkani Yadav, Vicki @ Vikash Yadav as having complicity in the said offence. He has further stated that both the arrested persons were forwarded. He also took the statement of the victim Dayanand Kumar (P.W.-5) and conducted inspection of the place of occurrence at village Pariyar, P.S. Bariyarpur giving the description of the first place of occurrence. The second place of occurrence is said to be the land with boundary of one Fantush Yadav in village Pariya where the victim was kept in a room with a boundary. The third place of occurrence has been stated to be a lane adjacent to the house of Arun Yadav in village Pariya where the victim Dayanand Kumar was assaulted and from where he was recovered and the appellant Chandan Kumar was arrested.



Further, he took the statements of the seizure list witnesses Chamak Lal Yadav(PW-1) and Nawal Kishore Yadav(PW-2) and also the statements of PW-3 PW-6 and PW-7, besides several other police officers and one Parmanand Kumar(brother of the victim) and Anant Kumar (maternal uncle of the victim). He also recorded the requisition of injury of Dayanand Kumar and upon completion of investigation, submitted charge-sheet no. 6/11 against accused Rahul and Chandan Kumar whom he identifies in the dock. He has also identified the handwriting of the scribe, S.I. Sanjay Kumar on the formal FIR and his own signature thereupon, which is marked as Exhibit-4. In his cross examination, on behalf of the accused Rahul Kumar, this witness has stated that he got transferred from Bariyarpur police station within 2 to 3 months and he completed his investigation within the said period and that the accused Rahul Kumar was apprehended in the morning of 25.12.2010. It would further appear from his cross examination that he got the information at the police station at 8:00 pm whereupon he made a station diary entry but he neither remembers the number of the said entry nor the same has been recorded in the case diary. It further appears from his statement that the receiving of the copy of the seizure list by the accused person has not been recorded thereupon. The



witness further accepts that the seizure list was prepared at 21:30 hours and there is a cutting on 21. He had enquired about the credential of the victim that he is a person of good character but he did not find out about his criminal antecedent. While stating that the cheques are of State Bank of India, he accepted that he did not make any enquiry from the bank. The witness further explains that since the matter related to ransom, he himself became the informant of the said case and did not make the injured Dayanand Kumar (PW-5), the informant of the case. He accepts that he did not consult any superior police officer with regard to the fact that whether he should assume charge as the Investigating Officer of a case after becoming the informant of the said case. No recovery of any weapon was made from the accused person. He recorded the statement of Dayanand Kumar (PW-5) with regard to the assault made upon him, but has not been able to say as to where such statement was recorded. However, in the next breath, he has stated that the statement of Dayanand Kumar was recorded at the police station. It has been further disclosed by him that he reached the place of occurrence at 9:00 pm and before recording his self statement, which took one hour, the seizure list was prepared, which took 20 minutes time. The witness further accepts in his cross examination that



he never made any prayer for recording the statement of the victim Dayanand Kumar under Section 164 of the Cr.P.C. When this witness had reached the place of occurrence, he had found the victim Dayanand Kumar tied by towel (Gamcha) and was crying in pain. He, however admits that there is no mention of this towel (Gamcha) and it has nowhere been written that a towel had been used for tying the victim. Further, he has not indicated the time of sending the injured Dayanand Kumar to Hospital nor he mentioned the time of preparation of the requisition for treatment. However, he states that he had sent Dayanand to hospital on 25.12.2010. At the end of the deposition, the witness lastly states that the mention of the injury report finds place in paragraph-53 of the case diary in which it is stated that he was examined at 8:30 pm on 24.12.2010.

22. After closing the prosecution case, the learned court below recorded the statements of the appellant and co-accused Golu Yadav @ Rahul Kumar on 16.07.2012 under Section 313 of this Cr.P.C. for enabling them to personally explain the circumstances appearing in the evidence against them. However, in their respective statements, they claimed themselves to be innocent and stated the case to be false.



23. However, trial Court upon appreciation, analysis and scrutiny of the evidence adduced at the trial has found the appellant guilty of the offence and sentenced him to imprisonment and fine, as noted above, by its impugned judgment and order, while the accused Rahul was acquitted by the said judgment.

Analysis and consideration

24. A bare perusal of the evidence of the prosecution reveals that the police upon some information from undisclosed source, had reached the place of occurrence upon lodging a Sanha where the appellant and the alleged victim Dayanand Kumar (P.W.-5) were both apprehended and upon the statement of the victim, five persons were named as FIR accused, including the appellant. The further case of the prosecution is of recovery of two cheques of State Bank of India of an amount of Rs. 40,000/- and 20,000/- dated 24.12.2010 issued in the name of the appellant by the victim. There is also a reference to an occurrence which took place on the previous day i.e. on 23.12.2010 when the victim was intercepted by the accused persons and some cash and his mobile was snatched away by the accused persons. There is a further story of the victim having gone to the house of grand mother where he was



followed by the appellant and one Pankaj Yadav and upon non-fulfillment of demand of Rs. 1,00,000/- the victim was again taken into their custody and was confined near the place of occurrence from where he was finally recovered by the informant. It is also the case of the prosecution that it was only the appellant Chandan Kumar who was arrested at the place of occurrence while the other four accused persons named in the FIR, managed to escape.

25. It remains a fact that the law was set into motion in the form of the present FIR by the informant Vishwanath Ram who is the SHO of Bariyarpur police station whereas the victim Dayanand Kumar was apprehended at the place of occurrence and the entire prosecution narrative of the FIR is based upon his statement. This takes us to the argument advanced on behalf of the defence as to why the victim Dayanand Kumar himself did not lodge an FIR and why the same was lodged by the present informant who is not only the SHO of Bariyarpur police station but who subsequently even assumed the charge of investigation. There is no indication in the FIR which would show that the victim was not in a condition to give statement/fardbeyan, rather it is allegedly upon his detailed disclosure that the facts have been narrated in the



exhaustive FIR. This fact instills a reasonable suspicion on the authenticity of the FIR and the veracity of the prosecution case. The self statement of the informant (P.W.-8) has however been marked as an Exhibit, with objection.

26. The over enthusiasm shown by the informant of the present case by lodging the FIR and then by assuming investigation thereupon is slightly difficult to comprehend. It has been argued vehemently on behalf of the appellant giving the reference of the case of **Mohan Lal Vs. the State of Punjab** reported in **(2018) 17 SCC 627** that the informant and the investigating officer cannot be the same since there are chances of tacit bias. However, the said view taken in the judgment has been overruled in the case of **Mukesh Singh & Ors. Vs. State (N. Branch of Delhi) in SLP (Cr.) No. 39528 of 2018** passed by a Larger Bench of the Hon'ble Apex Court which has laid down that in a case where the informant himself is the investigator, by that itself cannot be said that the investigation is vitiated on the ground of bias or the like factor. The question of bias or prejudice would depend upon the facts and circumstances of each case. Therefore, merely because the informant is the investigator, by that itself the investigation would not suffer the vice of unfairness or bias and therefore on



the sole ground that informant is the investigator, the accused is not entitled to acquittal. The matter has to be decided on a case to case basis. However, this fact needs to be viewed in the backdrop of other attending circumstances which could lead to a valid deliberation on the question as to whether it is on account of some oblique motive that the appellant has been falsely implicated and whether the evidence available on record are sufficient for convicting the accused or whether under such circumstances the appellant can be given the benefit of doubt.

27. So far as the truthfulness of the testimony of the informant Vishwanath Ram (P.W.-8) is concerned, same has to be gathered from his own deposition and the other attending factors in the form of corroboration from other quarters. At the outset, it would be relevant to consider that there is absolutely no disclosure about the source of confidential information, as a consequence of which the informant proceeded towards the place of occurrence. The factum of lodging a Sanha also does not stand proved as according to deposition of P.W.-8 himself neither the Sanha has been brought on record nor does he remember the station diary entry number. The informant has also specifically stated in paragraph-13 of the deposition that the station diary entry number is also not indicated in the case diary.



Further the time of receiving the information at the police station has been stated to be 8:00pm both in the fardbeyan of the informant as also in his deposition. It, however, appears from his evidence at paragraph-19 that he reached the place of occurrence at 9:00pm whereas the distance between place of occurrence and the police station is only about half kilometer, which would appear from the First Information Report itself and even as per the evidence of the informant/I.O. the distance is 1 ½ kilometer. It has further been stated in his evidence that he took one hour to record his own statement which was done at 10:00pm and prior to recording of his self statement he allegedly prepared the seizure list also. However, the said seizure list is dated 24.12.2010 but there is a cutting on the time indicated thereupon which is 21:30 (9:30pm). This cutting has been admitted by the informant in his evidence in paragraph-14. Further, despite the presence of the appellant at the place of occurrence, the specific statement of receiving a copy of the said seizure list by the appellant is also missing on the said document and the informant admits this fact too.

28. There are two witnesses P.W.-1 Chamak Lal Yadav and P.W.-2 Nawal Kishore Yadav respectively who have signed the seizure list and they are said to be independent



witnesses. These, two witnesses P.W.- 1 and P.W.-2 have however, stated in their deposition that their signatures, which have been marked as Ext. 1 and 1/A, had been taken on blank papers and these witnesses have not been declared hostile by the prosecution. On consideration of such grounds, it can be safely concluded that the sanctity of the seizure list is violated.

29. The evidence of the informant (P.W.-8, the investigating officer) is further flawed by the fact that despite making a specific statement that the victim was tied with towel (Gamchha) which was opened by the informant's guard, the said towel (Gamchha) does not find any reference in any of the documents, thereafter. He does not seem to have recovered any other incriminating article from the place of occurrence. This witness (P.W.-8) has not even made any prayer for recording the statement of the victim under Section 164 Cr.P.C., nor does the signature of the victim or the signature of any other witness appears on the self statement of the informant. This witness has stated that the victim Dayanand Kumar, P.W.-5, was found in an injured condition but from his self statement it would appear that he had taken all details from him after taking him to the police station with regard to the incident which is indicative of the fact that the victim was in perfect condition to give a



statement which could form the basis of an FIR. The informant has admitted that he has neither indicated the time of sending the victim to the hospital nor has he indicated the time of preparation of the requisition for the same, during the course of investigation. It has rather been stated that he sent the victim for treatment on 25.12.2010 whereas the self statement was allegedly recorded on 24.12.2010 itself at 10:00pm. The falsity of his statement that he sent the victim for treatment on 25.12.2010 becomes apparent from his own statement recorded in paragraph-26 of the deposition wherein he admits that the injury report of the victim finds reference in paragraph-53 of the case diary in which date and time of examination has been recorded as 24.12.2010 at 8:30pm. These are some major and unignorable inconsistencies and contradictions which cannot be reconciled and which shakes the very foundation of the case. Hence, the evidence of the informant, P.W.-8, who has also over enthusiastically acted as the investigating officer of the case, does not inspire confidence.

30. Now adverting to the evidence of the victim himself, it remains a mystery as to why this witness Dayanand Kumar (P.W.-5), did not himself get his fardbeyan recorded as the informant of the present case. His evidence also suffers from



some serious infirmities as he relates to a story which took place on 23.12.2010, i.e. a day prior to the actual date of occurrence when he was recovered by the informant and other police personnel. His entire story of getting off from the train at Bariyarpur and being intercepted all of a sudden by 4-5 boys who tied him up and confined him without even knowing him, sounds suspicious. His further claim of having fled away from his place of confinement to the house of his grandmother in the night also does not find any support from the evidence of his grand mother Pancha Devi (P.W.-6) and his maternal aunt Mamta Devi (P.W.-7) who have both been declared hostile by the prosecution. He further talks about two cheques being issued by him upon force and coercion, in favour of the appellant. However, the said two cheques did not see the light of the day as they have neither been produced, nor marked as material Exhibits in the case. He has also admitted that his signature on the cheques was not properly made and he does not remember the cheque number. Despite his statement that a crowd had gathered at the place of occurrence, not a single independent witness has been examined in support of the prosecution case and his narrative has even not been supported by his grand mother P.W.-6 and his maternal aunt P.W.-7, thereby raising a



finger of suspicion on his entire story.

31. The seizure made in the instant case becomes one of the most relevant factors to prove the truthfulness of the prosecution case. The seizure, however, has not been done in accordance with law and the mandatory provisions of search and seizure have also not been followed which is in violation of Section 100 of the Cr.P.C. It would appear from the evidence of P.W.-3 Ramji Paswan who is the Chowkidar and has also been named in the FIR as being part of the police team, that there was no self-search of the persons who conducted the search of the appellant and the timings given by him in his evidence is not in consonance with timing given by the informant and the victim. According to this witness (P.W.-3) the information with regard to kidnapping of two boys was received at 4:00pm on 24.12.2010, they reached the place of occurrence at 4:15pm and apprehended both the appellant and the victim Dayanand Kumar and brought them to the police station. There is a specific statement in his evidence at paragraph-4 that all documentations were done at the police station and the seizure list was not prepared at the place of occurrence. Both the members of the police team being P.W.-3, the Chowkidar and P.W.-4, Jugal Singh (Sap Jawan) have stated that there was a huge crowd at



the place of occurrence and that both the appellant and the victim were apprehended and brought to the police station and no documentation was done at the place of occurrence. It has already been noted above that two seizure list witnesses have not supported the factum of seizure either at the place of occurrence or at the police station, inasmuch as it is admitted that they have signed on blank papers. The non- production of the two seized articles, being the cheques in question and non-marking of the same as exhibits, coupled with the fact that the seizure list witnesses have not supported the said seizure, makes the entire story of seizure palpably false. The cheques in question being at the very foundation of the case, the entire edifice built by the prosecution is razed to the ground. Virtually, in absence of proper proof of seizure coupled with non-production of the seized articles, leads us to the conclusion that there was no seizure at all.

32. It is also noticed upon examination of the entire evidence on record that there is no recovery of any weapon from the place of occurrence as against the allegation of assault upon the victim with the back portion of some weapons. Some of the material witnesses like the brother of the victim namely Parmanand Kumar to whom ransom call was made, has not



been examined in the case as witness. The maternal uncle Anand Sharma to whose house the victim has stated that he was going on 23.12.2010 when he was intercepted by the accused persons, has also not been examined in support of said fact. The genesis of the occurrence as disclosed by the informant and the victim which began from 23.12.2010 does not get proved in absence of the examination of these material witnesses who could have lent some support to the story as narrated by the victim. Further, the victims credentials have also been doubted by way of suggestions given to him that he was engaged earlier in train robbery, which has no doubt been denied by him.

33. In the background of such facts it can be safely concluded that the prosecution case suffers from serious infirmities as there is complete want of explanation much less plausible, as to why the victim was not made the informant of the present case. The absence of conclusive evidence with regard to the seizure of cheques in question, the story of victim going to the house of his grand mother not supported by P.W.-6 and P.W.-7 and the irreconcilable conflict in the time of occurrence as disclosed by the informant and P.W.-3 who is a member of police team, brings the entire prosecution case under a ring of suspicion. The non-examination of any independent



witness from the place of occurrence and the non-recovery of any weapon, towel (Gamchha) or any other incriminating article and even the cheques in question makes the entire place of occurrence as stated by the informant/I.O. (P.W.-8) doubtful and renders it, as not established. The time of occurrence also gets negated in view of the inconsistencies amongst the prosecution witnesses themselves and also in view of the fact that the time indicated in the injury report is totally contrary to one indicated by the informant P.W.-8 and the same would be apparent from paragraphs-25 and 26 of the deposition of P.W.8 himself.

34. In the abovementioned fact scenario, the major question with regard to the sustainability of the conviction of the appellant under Section 364A of the Indian Penal Code is to be answered taking into consideration whether the ingredients of Section 364A of the IPC are made out or not and also whether the prosecution has been able to establish its case beyond reasonable doubts. The very judgment of conviction and sentence reveals that in the present case, the charges under Section 323, 414 and 506 of the IPC have not been proved against the accused persons, hence, the appellant has been acquitted under the said Sections. In such view of the matter, the factum of causing hurt, the recovery of any stolen article and the



offence of criminal intimidation stands not proved, although specific charges were framed under the aforesaid provisions of law. This brings us closer to the question of sustainability of conviction under Section 364-A IPC when specific charges of hurt, criminal intimidation and recovery of stolen article has been disbelieved.

35. For better appreciation, Section **364-A IPC** is being reproduced hereinbelow for ready reference:-

“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.”

36. It would appear from a bare reading of the abovementioned provision that besides kidnapping of a person, it has also to be proved that the kidnapped person is threatened of death or hurt to be caused to him or there is a reasonable apprehension of the same in order to compel payment of ransom. The Hon'ble Apex Court has expressed its view upon



the applicability of Section 364-A IPC in several judicial pronouncements, but in a recent judgment, rendered in the case of **Ravi Dhingra Vs. State of Haryana**, reported in (2023) 6 SCC 76, the Hon'ble Apex Court has considered the question in detail in paragraphs no. 24 and 25 thereof. A reference has been made to the case of **S.K. Ahmed Vs. So Telangana** reported in (2021) 9 SCC 59. It would be apt to reproduce paragraph nos. 24 and 25 of the judgment rendered in the case of **Ravi Dhingra (supra)** hereinbelow:

“24. Most recently, this Court in S.K. Ahmed has emphasised that Section 364-A of the IPC has three stages or components, namely,

- (i) kidnapping or abduction of a person and keeping them in detention;*
- (ii) threat to cause death or hurt, and the use of kidnapping, abduction, or detention with a demand to pay the ransom; and*
- (iii) when the demand is not met, then causing death.*

25. The relevant portions of the said judgment are extracted as under:

“12. We may now look into Section 364-A to find out as to what ingredients the section itself contemplate for the offence. When we paraphrase Section 364-A following is deciphered:

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

(ii) “and threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt,

(iii) or causes hurt or death to such person in order to compel the Government or any foreign State or international inter- governmental organisation or any other person to do or abstain from doing any act



or to pay a ransom'

(iv) "shall be punishable with death, or imprisonment for life, and shall also be liable to fine. 'The first essential condition as incorporated in Section 364-A is 'whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction'. The second condition begins with conjunction "and". The second condition has also two parts i.e. (a) threatens to cause death or hurt to such person or (b) by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt. Either part of above condition, if fulfilled, shall fulfil the second condition for offence.

13. We have noticed that after the first condition the second condition is joined by conjunction "and", thus, whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction and threatens to cause death or hurt to such person.

14. The use of conjunction "and" has its purpose and object. Section 364-A uses the word "or" nine times and the whole section contains only one conjunction "and", which joins the first and second condition. Thus, for covering an offence under Section 364-A, apart from fulfilment of first condition, the second condition i.e. "and threatens to cause death or hurt to such person" also needs to be proved in case the case is not covered by subsequent clauses joined by "or".

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

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

** * * * **

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



are as follows:

(i) Kidnapping or abduction of any person or keeping a person in detention after such kidnapping or abduction; and

(ii) threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt or;

(iii) causes hurt or death to such person in order to compel the Government or any foreign State or any Governmental organisation or any other person to do or abstain from doing any act or to pay a ransom.

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

37. In the light of the abovementioned, legal proposition and upon perusal of the evidence in the instant case, it can be safely concluded that the ingredients of section 364-A IPC were certainly not proved by the prosecution inasmuch as the prosecution failed to lead cogent evidence to establish either threat perception, or demand of ransom.

38. In the present facts scenario, the acquittal of the appellant from the charges under Sections 323, 414 and 506 IPC would negate the proposition that any hurt has been caused or any criminal intimidation has been made or any recovery has been effected from the appellant. This finding of acquittal under the aforesaid Sections comes in the background of the fact that



the prosecution has miserably failed to bring any conclusive evidence on record to prove that there was either any demand for ransom or any recovery made from the appellant. The prosecution's argument of the victim's statement with regard to the fact that the cheques were issued in the name of the appellant has no substance as the prosecution has miserably failed to prove the seizure of the cheques in question and the sanctity of entire procedure of search and seizure has been totally violated. The further argument of the prosecution with regard to existence of threatening in the evidence of P.W.-5 (victim) also stands not established and has thus resulted in acquittal from Section 506 of the IPC. Further, it also needs to be considered that although FIR was also lodged u/s 342 IPC, this provision relating to the offence of wrongful confinement was also dropped from the charge-sheet and no cognizance was taken later, thereunder nor the charges were framed under the abovementioned provision of law.

39. The fact as urged by the prosecution that the appellant was arrested on the spot also remains surrounded in cloud of suspicion as there is no independent witness of the place of occurrence and as per the evidence of the prosecution witnesses themselves the entire documentation etc has been



done at the police station. Moreover, the conduct of the Investigating Officer itself is not free from suspicion and bias. In the case of **Yakub Abdul Razak Memon Vs. State of Maharashtra**, reported in **(2013) 13 SCC 1**, the Hon'ble Apex Court had noted that the primary intention behind the “panchnama” is to guard against possible tricks and unfair dealings on the part of the officers entrusted with the execution of the search and also to ensure that anything incriminating which may be said to have been found in the premises searched, was really found there and was not introduced or planted by the officers of the search party. It was further noted that the legislative intent was to control and check these malpractices of the officers, by making the presence of independent and respectable persons compulsory for search of a place and seizure of an article.

40. A reference may also be had, at this juncture to the judgment rendered by the Hon'ble Apex Court in the case of **Rajesh Vs. State of M.P.**, reported in **(2023) 15 SCC 521: 2023 SCC Online SC 1202** (Three Judges Bench), paragraph nos. 37 and 38 whereof are reproduced quoted hereinbelow:

“37. The following mandatory conditions were culled out from Section 100 Cr.P.C. for the purposes of a valid panchnama:



(a) All the necessary steps for personal search of officer (Inspecting officer) and panch witnesses should be taken to create confidence in the mind of court as nothing is implanted and true search has been made and things seized were found real.

(b) Search proceedings should be recorded by the I.O. or some other person under the supervision of the panch witnesses.

(c) All the proceedings of the search should be recorded very clearly stating the identity of the place to be searched, all the spaces which are searched and descriptions of all the articles seized, and also, if any sample has been drawn for analysis purpose that should also be stated clearly in the Panchanama.

(d) The I.O. can take the assistance of his subordinates for search of places. If any superior officers are present, they should also sign the Panchanama after the signature of the main I.O.

(e) Place, Name of the police station, Officer rank (I.O.), full particulars of panch witnesses and the time of commencing and ending must be mentioned in the Panchnama.

(f) The panchnama should be attested by the panch witnesses as well as by the concerned IO.

(g) Any overwriting, corrections, and errors in the Panchnama should be attested by the witnesses.



(h) If a search is conducted without warrant of court Under Section 165 of the Code, the I.O. must record reasons and a search memo should be issued.

38. It was held that a panchnama would be inadmissible in a Court of law if it is recorded by the Investigating Officer in a manner violative of Section 162 Cr.P.C. as the procedure requires the Investigating Officer to record the search proceedings as if they were written by the panch witnesses themselves and it should not be recorded in the form of examining witnesses, as laid down in Section 161 Cr.P.C. This Court concluded, by stating that the entire panchnama would not be liable to be discarded in the event of deviation from the procedure and if the deviation occurred due to a practical impossibility, then the same should be recorded by the Investigating Officer so as to enable him to answer during the time of his examination as a witness in the Court of law.”

41. The serious lapses committed by the I.O. in the present case cannot be ignored. Moreover, the story narrated by the victim (P.W.-5) himself stands at a sticky wicket and the very fact of the victim being even kidnapped and kept in confinement gets no corroboration from any other independent quarters. Hence, in absence of proof of demand of ransom and



threat perception, the ingredients of Section 364-A IPC are not established. Further, in view of the fact that no evidence at all has been collected from the crime scene and there is nothing to show that the victim was kidnapped and kept in confinement, the present case is not even fit to be converted into one under Section 363 IPC as the very foundation of the case has been shaken and the offence of kidnapping simpliciter also does not get established. There is thus a complete dearth of evidence to prove the charges against the appellant and the prosecution evidence on record is replete with inherent inconsistencies. Further, it may be noted here that the other accused, Rahul, who faced trial along with the appellant, was also acquitted of all the charges by the impugned judgment itself on the same piece of evidence.

42. In view of all the abovementioned facts and circumstances and after a careful consideration and scrutiny of the entire evidence on record, this Court reaches a considered conclusion that the prosecution has failed to establish its case beyond all reasonable doubts.

43. Thus, taking an overall perspective of the entire case, emerging out of the totality of the facts and circumstances, as indicated hereinabove and for the foregoing reasons, we find that the prosecution has failed to prove the charges against the appellant beyond all reasonable doubts, hence by way of



extending benefit of doubt, the appellant deserves to be acquitted of the charges levelled against him.

44. Accordingly, the finding of conviction recorded by the learned Trial Court, in our opinion, is not sustainable and requires interference, therefore, the judgment of conviction and order of sentence dated 28.09.2012 and 29.09.2012, passed by the Additional Sessions Judge-IV, Munger in Sessions Trial No.261 of 2011 (arising out of Bariyarpur P.S. Case No.134 of 2010) are hereby set aside.

45. The sole appellant, who is in custody, is directed to be released from the jail forthwith, if not required in any other case.

46. Accordingly, the appeal stands allowed.

(Soni Shrivastava, J)

Mohit Kumar Shah, J.:

(Mohit Kumar Shah, J)

devendra/-

AFR/NAFR	AFR
CAV DATE	09.04.2025
Uploading Date	17.05.2025
Transmission Date	17.05.2025

