2025:CGHC:3373-DB

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 828 of 2021

1 - Ishwar Prasad Son Of Devlal Sahu Aged About 40 Years R/o. Village Khairjhiti, Police Station Kunda, District Kabirdham (Chhattisgarh), District : Kawardha (Kabirdham), Chhattisgarh

... Appellant(s)

versus

1 - State of Chhattisgarh Through Police Station Kunda, District Kabirdham (Chhattisgarh), District : Kawardha (Kabirdham), Chhattisgarh

... Respondent(s)

For Appellant(s)	:	Ms. Savita Tiwari, Advocate.
For Respondent(s)	:	Mr. S. S. Ubeja, Panel Lawyer.

Hon'ble Shri Ramesh Sinha, Chief Justice

Hon'ble Shri Ravindra Kumar Agrawal, Judge

Order on Board

Per Ravindra Kumar Agrawal, J.

20/01/2025

1. The present appeal has been filed under Section 374(2) of the Code of Criminal Procedure 1973, (*for short the, Cr.P.C.*) against the impugned judgment of conviction and sentence dated 22.06.2021, passed by Learned Additional Sessions Judge, Kabirdham, District- Kabirdham, Chhattisgarh in Sessions Case No. 21/2019, whereby the appellant has been convicted and sentenced for the offence in the following manner:-

Conviction	Sentence
Under Section 363 of I.P.C.	RI for one year and fine amount of Rs. 500/-, in default of fine amount additional RI for one month.
Under Section 364-A of I.P.C.	RI for life and fine amount of Rs. 1000/-, in default of fine amount additional RI for three months.
Both the sentences will run concurrently.	

2. Brief facts of the case are that on 14.03.2019 at about 07:00 p.m., the victim Mahendra Sahu aged about 06 years, was playing in front of his house, the appellant came there by his motorcycle and kidnapped the victim by the said motorcycle and went towards Neurgao. During his search by his family members, the father of the victim received a telephonic call in his mobile phone through the mobile No. 8827439785 and demanded ransom of 3 lakh and called him near village Pandaria. He threatened also that if it is informed to the police, his son would be killed. A letter was also thrown on the door of the complainant and then the father of the victim Shravan Sahu lodged a report to the police and the FIR is registered for the offence under Section 363 and 364-A of I.P.C. on 14.03.2019 (Ex.-P/2). After tracing the location of mobile phone from which the ransom called was made to the father of the victim, he was recovered from the possession of the appellant on 14.03.2019 at about 22:30 hours and recovery panchnama Ex.-P/10 was prepared in presence of the witnesses. One samsung mobile has been seized from the father of the victim vide seizure memo Ex.-P/4. On 15.03.2019 a ransom demand letter was seized from the father of the victim vide seizure memo Ex.-P/5. The appellant was arrested on 15.03.2019 and one register having his handwriting has been seized from him vide seizure memo Ex.-P/9, one motorcycle, his mobile phone having SIM No. 8827439785 and white towel had been seized vide seizure memo Ex.-P/15 from the appellant. Call detail of the mobile No. 8827439785 has also been obtained by the concerned

service provider along with the certificate under Section 65-B of the Evidence Act.

3. Statement of the witnesses under Section 161 of Cr.P.C. have been recorded and after completion of usual investigation charge-sheet was filed before the learned Judicial Magistrate First Class, Pandaria for the offence under Section 363, 364-A of I.P.C. The case was committed to the Court of learned Sessions Judge, Kabirdham from where the same has been transferred to the learned trial Court for its trial.

4. The learned trial Court has framed charge against the appellant for the offence under Sections 363 and 364-A of I.P.C. The appellant abjured his guilt and claimed trial.

5. In order to prove the charge against the appellant, the prosecution has examined as many as 13 witnesses. Statement of the appellant under Section 313 of Cr.P.C. has also been recorded, in which he denied the circumstances appears against him, plead innocence and have submitted that he has been falsely implicated in the offence. He further submitted that the property dispute exists between his father as well as father of the complainant and due to the dispute between the parties, he has been falsely implicated in the offence.

6. After appreciation of oral as well as documentary evidence led by the prosecution, the learned trial Court has convicted and sentenced the appellant as mentioned in earlier part of this judgment. Hence this appeal.

7. Learned counsel for the appellant would submit that the prosecution has failed to prove its case beyond reasonable doubt. There are material omissions and contradictions in the evidence of prosecution witnesses which cannot be made basis for conviction of the alleged offence. There is no evidence that the appellant has made a ransom call or left the ransom letter to the house of the complainant. He being the relative of the complainant has made telephonic call with respect to the land dispute between the parties. He

would further submits that he being the relative, the victim himself had gone with him and he neither made any ransom call nor demanded any amount as ransom from the complainant and it is only to oust him from his property, complainant has made all these plans in which his minor son has been made instrumental. From the evidence of prosecution witnesses no any incriminating evidence appears against the present appellant which makes him liable for the offence of kidnapping for ransom. There is no cogent and clinching evidence against the appellant and he is entitled for acquittal.

8. On the other hand, learned counsel for the State opposes and have submitted that the prosecution has proved its case beyond reasonable doubt against the appellant. But for minor omissions and contradictions the evidence of the prosecution witnesses are reliable. The PW-4 Mahendra Sahu is the victim of offence have clearly deposed that the appellant has kidnapped him and the victim has been recovered from the possession of the appellant which itself shows his mala fide intention. From the call detail report it is also proved that at the relevant point of time he made a telephonic call to the complainant and demanded ransom and threatened him not to disclose the incident to police otherwise his son would be killed. Therefore, there is sufficient evidence available on record and the learned trial Court after considering the evidence available on the record rightly convicted the appellant for the offence in question and his appeal is liable to be dismissed.

9. We have heard learned counsel for the parties and perused the material available on record.

10. PW-4, Mahendra Sahu who is the victim of the offence have stated in his evidence that he knew the appellant who is his elder father. At the time when he was playing in front of his house, the appellant came there by his motorcycle and forcefully took him by his motorcycle by saying that he is taking him to his father. At that time appellant has covered his face by towel. At the time when he was taking by the appellant by motorcycle he was

hurling knife. Near the river, he used to talk someone in his mobile phone and at about 10:00 p.m. the police persons have rescued him. In cross-examination he admitted that the appellant took him on the pretext that they will visit places. He further stated that the appellant took him in forward direction. He did not know as to what the appellant was talking in is mobile phone. The appellant has covered his face by red and while towel, he shown his ignorance about any property dispute between their families. He denied that he came to know about appellant that he is elder father at the time when he was taking him by motorcycle.

11. PW-2, Shravan Sahu is the father of the victim, he stated in his evidence that at the time of incident when he came back from the shop he was not found his son in the house and then he asked from his wife about his whereabouts. Thereafter, they started searching him and then his aunt have disclosed that a person who came with motorcycle and covered his face by towel has taken his son towards Neurgao. At about 07:00 p.m. he received a telephonic call in his mobile No. 8889387561 which was from one Sunita's name. The person who call him by mobile phone demanded ransom of Rs. 3 lakh and asked to come to Pandaria when he went to Pandaria, he made a telephonic call to the person who made ransom call to him. Then he again demanded the ransom money and threatened him that he will kill his son and not to disclose it to the police. Thereafter, he informed the police by mobile phone and then the police started searching and ultimately the appellant was caught along with the victim from Kosamtara - Setganga road. He lodged the report to the police station on the same day which is Ex.-P/2. The police has seized his mobile phone vide seizure memo Ex.-P/4. At this stage this witness have been declared hostile and when the prosecution has cross-examined him he stated that after lodging of the report when he return back to his house he found a ransom letter on his door which was seized by the police. In cross-examination he admitted that the appellant is his cousin brother. He admitted

the partition of the property at the time of their grandfather but the holdings are not separated and still recorded in joint name. He further admitted that after death of his grandfather, his father had requested him to get the Rin-Pustika prepared as per their earlier partition. Even after the lodging of the report they have requested the father of the appellant to get the holding of the land separated. He admitted that he is agriculturist and the main source of the income of the appellant is also from the agriculture and labourer. He further admitted that there is no dispute between his and appellant's family. He has further stated that he disclosed in his police report and statement that he received telephonic call by the name of Sunita and if it is not there in his police report and statement he could not tell the reason. He further admitted that his elder father have asked him to get the appellant released from jail and he further admitted that he replied his elder father that he will see to it only after their holdings separated as per the partition. In his cross-examination he stated that he did not know as to what is the mobile number of the appellant.

12. PW-3, Saroj Sahu is the mother of the victim have stated in her evidence that when she could not found the victim in the house and her husband asked about him then they started searching him. Her aunt Shivbati informed that someone has took the victim with him. At about 07:30 p.m. her husband had received a telephonic call, thereafter, she did not know what happened. Later on her husband informed him that her son has recovered near Fasterpur. On some point she turned hostile but in cross-examination by the prosecution she admitted that her husband has informed her that the appellant has kidnapped the victim and demanded ransom of Rs. 3 lakh and threatened him to kill the victim. In cross-examination she has admitted the relationship between the parties but denied about knowledge of any property dispute. She is the witness to the fact that her husband has informed her that the victim was being kidnapped by the appellant.

13. PW-5, Jailal Sahu is the uncle of the appellant and father of the complainant Shravan Sahu. He stated that he was being informed that the victim was being kidnapped by someone and his family members had gone to his search. About 12:00-01:00 in the night his father has taken him back and after sometime when he asked, the victim informed him that his elder father has taken him by motorcycle and except this he did not disclose anything. He too have been declared hostile at this stage and stated that Shivbati Sahu has informed about the incident to him and also about the ransom call. In cross-examination he stated that when he return back from the village, he had no talk with his brother and sister-in-law. He admitted that none of the person have informed him about ransom call.

14. PW-6, Shivbati Sahu, is the aunt of the appellant and grandmother of the victim, she stated in her evidence that at the time of incident she was cleaning her house and saw that the appellant took the victim with him and had gone towards Neurgao and after sometime he left him in front of his house. She also been declared hostile and thereafter she has not supported the prosecution case. In cross-examination she stated that there was dispute with respect to the property between both the families and the dispute is with respect to the separation of the holdings. She further admitted that at the time of when she saw the appellant, he was not covered his face and it is the victim who insisted the appellant to go to visit places and then the appellant took him and after sometime left him to his house. She further admitted that she informed the father of the victim that the appellant took the victim to visit places, thereafter, the father of the victim has lodged report against the appellant.

15. PW-7, Peshiram Sahu, is the witness of the seizure of the mobile phone vide seizure memo Ex.-P/4. He is also a witness to the seizure memo Ex.-P/5, by which a ransom letter was seized. Though he also stated about the incident of kidnapping and ransom demand but he can be considered to be witness of

only seizure through Ex.-P/4 and Ex.-P/5 because there is no statement of this recorded by the police under Section 161 of the Cr.P.C.

16. PW-8, Kanhaiya Sahu is another witness of the document Ex.-P/4 and Ex.-P/5 and has not supported the prosecution case turned hostile.

17. PW-9, Gopal Sahu have stated in his evidence that he came to know in the village that the victim has been kidnapped and after about 2 hours, he further came to now that he was recovered near village Kunda. When he went to police station, he saw the victim and his elder father/appellant there in the police station and then the Ishwar has raised voice that the appellant has kidnapped his son. This witness have also been declared hostile and not supported the prosecution case. He too have stated about the property dispute between the two families of the appellant as well as the victim.

18. PW-10, Narendra Kumar Jaiswal is the witness of recovery panchnama Ex.-P/10 he stated in his evidence that on the date of incident at about 10:30 p.m. in the night the police persons have recovered the victim from the appellant and prepared recovery panchnama Ex.-P/10. From the appellant his motorcycle and towel has also been seized which is Ex.-P/11 and his signature is there in the seizure memo. With respect to the seizure of his mobile phone this witness have turned hostile. In cross-examination he stated that since it was the night time, therefore, he could could see the colour of the vehicle. He subsequently came to know about the property dispute between the family of the appellant as well as the complainant. He denied the recovery of the victim from the possession of the appellant.

19. PW-11, Chandrakant Tiwari is the Assistant Sub Inspector and working at Cyber Cell at the Office of Superintendent of Police he issued the mobile call detail report of the mobile phone No. 8827439785 which Ex.-P/12. He also issued the certificate under Section 65-B which is Ex.-P/13. In the document Ex.-P/12 the details of call is there which has been made through mobile No. 8827439785. In cross-examination he admitted that in the certificate Ex.-P/13

it has not been mentioned that the SIM card is running in whose name. He admitted that along with the CDR form has not been annexed any document in the name of Sunita.

20. PW-12, Tijau Sahu is also one of the witness of seizure memo Ex.-P/9 but he turned hostile and have not supported the prosecution case.

21. PW-13, Rajesh Jangde is the Investigating Officer have proved the process of investigation which he has done after receiving the information about the offence he also stated during the investigation he recovered the victim from the possession of the appellant. He admitted in his cross-examination that the father of the victim have not disclosed that he received the telephonic call from the mobile of any Sunita. He being the procedural witness have proved investigation.

22. From all these evidences, it is only two are the important witnesses that PW-4 victim and PW-2 father of the victim. The victim was found in possession of the appellant which has been proved by the prosecution by the evidence of victim himself, his father PW-2 and the witness of recovery (PW-10) Narendra Kumar Jaiswal. Whether or not, he took the victim to visit places, it is disputed in the present case but the facts remains that he was recovered from the possession of the appellant from Kosamtara - Setganga road. The victim PW-4 have stated that the appellant forcefully took him by saying that he is taking him to his father and when the victim himself have stated that the appellant has taken him to visit places but instead of returning back to their house, they are going forward, therefore, it cannot be said that the appellant has not kidnapped the victim and kept him away from his lawful guardianship. The kidnapping is defined in Section 361 of the I.P.C. and punishment is defined under Section 363 of I.P.C. which reads 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.
>
> **363. Punishment for kidnapping -** Whoever kidnaps any person from [India] or from lawful guardianship, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

23. From the definition given in Section 361 of I.P.C., it is amply clear that if any person takes any minor under 16 years of age out of keeping of the lawful guardian of such minor without the consent of such guardian is said to kidnap such minor from lawful guardianship. In the present case although he is one of his relative in presence of his parents, the appellant cannot be considered to be the guardian of the minor victim and when he forcefully took him without any consent of her guardian/parents, the appellant is definitely guilty for the offence of kidnapping as provided under Section 361 of I.P.C.

24. So far as the kidnapping for ransom is concerned, the offence is defined under Section 364-A of the I.P.C. which is 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.]*

25. In the matter of ***Shaik Ahmed vs. State of Telangana 2021 (9) SCC 59***, the Hon'ble Supreme Court has considered the pre-requisite of Section 364-A

which has to be satisfy before convicting the accused for the offence and held in Para 9 to 33 and 41, 42 that:-

> **9.**The Law Commission of India took up the revision of Indian Penal Code and submitted its report, i.e., 42nd Report (June, 1971). In Chapter 16, offences affecting the human body was dealt with. The chapter on kidnapping and abduction was dealt by the Commission in paragraphs 16.91 to 16.112. Section 364 and 364A was dealt by the Commission in paragraphs 16.99 to 16.100 which are as follows:-
>
> > **"16.99**. ***Section 364-Amendments proposed.-*** punishes the offence of kidnapping or abduction of a person in order to murder him, the maximum punishment being imprisonment for life or for ten years. In view of our general recommendation as to imprisonment for life, we propose that life imprisonment should be omitted and term imprisonment increased to 14 years. The illustrations to the section do not elucidate any particular ingredient of the offence and should be omitted.
> >
> > **16.100.** ***Section 364-A-Kidnapping or abduction for ransom-*** We consider it desirable to have a specific section to punish severely kidnapping or abduction for ransom, as such cases are increasing. At present, such kidnapping or abduction is punishable under section 365 since the kidnapped or abducted person will be secretly and wrongfully confined.
> >
> > We also considered the question whether a provision for reduced punishment in case of release of the person kidnapped without harm should be inserted, but we have come to the conclusion that there is no need for it. We propose the following section:-
> >
> > **"364-A**. ***Kidnapping or abduction for ransom*** .—Whoever kidnaps or abducts any person with intent to hold that person for ransom shall be punished with rigorous imprisonment for a term which may extend to 14 years, and shall also be liable to fine."
>
> **10.** Although the Law Commission has in paragraph 16.100 proposed Section 364A, which only stated that whoever kidnaps or abducts any person with intent to hold that person for ransom be punished for a term which may extend to 14 years. Parliament while inserting Section 364A by Act No.42 of 1993 enacted the provision in a broader manner also to include kidnapping and abduction to compel the Government to do or abstain from doing any act or to pay a ransom which was further amended and amplified by Act No.24 of 1995.
>
> **11.** Section 364A as it exists after amendment is as follows:-
>
> > **"364A.** ***Kidnapping for ransom, etc***.—Whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction and threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt, or

causes hurt or death to such person in order to compel the Government or any foreign State or international inter-governmental organisation or any other person to do or abstain from doing any act or to pay a ransom, shall be punishable with death, or imprisonment for life, and shall also be liable to fine."

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

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

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

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

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

The first essential condition as incorporated in Section 364A is "whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction". The second condition begins with conjunction "and". The second condition has also two parts, i.e., (a) threatens to cause death or hurt to such person or (b) by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt. Either part of above condition, if fulfilled, shall fulfill the second condition for offence. The third condition begins with the word "or", i.e., or causes hurt or death to such person in order to compel the Government or any foreign State or international inter-governmental organisation or any other person to do or abstain from doing any act or to pay a ransom. Third condition begins with the word "or causes hurt or death to such person in order to compel the Government or any foreign state to do or abstain from doing any act or to pay a ransom". Section 364A contains a heading "kidnapping for ransom, etc." The kidnapping by a person to demand ransom is fully covered by Section 364A.

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

15. The word "and" is used as conjunction. The use of word "or" is clearly

distinctive. Both the words have been used for different purpose and object. Crawford on Interpretation of Law while dealing with the subject "disjunctive" and "conjunctive" words with regard to criminal statute made following statement:-

> "……..The Court should be extremely reluctant in a criminal statute to substitute disjunctive words for cojunctive words, and vice versa, if such action adversely affects the accused."

16. We may also notice certain judgments of this court where conjunction "and" has been used. In Punjab Produce and Trading Co. Ltd. Vs. The CIT, West Bengal, Calcutta (1971) 2 SCC 540, this Court had occasion to consider Section 23-A Explanation b(iii) of Income Tax Act, 1922 which provision has been extracted in paragraph 5 of the judgment which is to the following effect:-

> "Explanation. — For the purposes of this section a company shall be deemed to be a company in which the public are substantially interested—
>
> (a) If it is a company owned by the Government or in which not less than forty per cent of the shares are held by the Government.
>
> (b) If it is not a private company as defined in the Indian Companies Act, 1913 (7 of 1913) and—
>
> (i) its shares (not being shares entitled to a fixed rate of dividend, whether with or without a further right to participate in profits) carrying not less than fifty per cent of the voting power have been allotted unconditionally to, or acquired unconditionally by, and were throughout the previous year beneficially held by the public (not including a company to which the provisions of this section apply):
>
> Provided that in the case of any such company as is referred to in sub-section (4), this sub-clause shall apply as if for the words 'not less than fifty per cent' the words 'not less than forty per cent', had been substituted;
>
> (ii) the said shares were at any time during the previous year the subject of dealing in any recognised stock exchange in India or were freely transferable by the holder to other members of the public; and
>
> (iii) the affairs of the company or the shares carrying more than fifty per cent of the total voting power were at no time during the previous year controlled or held by less than six persons (persons who are related to one another as husband, wife, lineal ascendant or descendant or brother or sister, as the case may be, being treated as a single person and persons who are nominees of another person together with that other person being likewise treated as a single person:
>
> Provided that in the case of any such company as is referred to in sub-section (4), this clause shall apply as if for the words 'more than fifty per cent', the words 'more than sixty per cent', had been substituted."

17. This Court held following in paragraph 8:-

"8. ……...The clear import of the opening part of clause (b) with the word "and" appearing there read with the negative or disqualifying conditions in sub-clause (b)(iii) is that the assessee was bound to satisfy apart from the conditions contained in the other sub- clauses that its affairs were at no time during the previous year controlled by less than six persons and shares carrying more than 50 per cent of the total voting power were during the same period not held by less than six persons……."

18. In another judgment, Hyderabad Asbestos Cement Products and Anr. Vs. Union of India, (2000) 1 SCC 426, this Court had occasion to consider Rule 56-A of Central Excise Act, 1944. The Court dealt with interpretation of conjunctive and disjunctive "and", "or". Proviso to Rule 56-A also uses the conjunctive word "and". The Provision of the Rule as quoted in paragraph 4 is as below:-

"56-A. Special procedure for movement of duty-paid materials or component parts for use in the manufacture of finished excisable goods.—(1) Notwithstanding anything contained in these rules, the Central Government may, by notification in the Official Gazette, specify the excisable goods in respect of which the procedure laid down in sub-rule (2) shall apply.

(2) The Collector may, on application made in this behalf and subject to the conditions mentioned in sub-rule (3) and such other conditions as may, from time to time, be prescribed by the Central Government, permit a manufacturer of any excisable goods specified under sub-rule (1) to receive material or component parts or finished products (like asbestos cement), on which the duty of excise or the additional duty under Section 2-A of the Indian Tariff Act, 1934 (32 of 1934), (hereinafter referred to as the countervailing duty), has been paid, in his factory for the manufacture of these goods or for the more convenient distribution of finished product and allow a credit of the duty already paid on such material or component parts or finished product, as the case may be: .

Provided that no credit of duty shall be allowed in respect of any material or component parts used in the manufacture of finished excisable goods—

(i) if such finished excisable goods produced by the manufacturer are exempt from the whole of the duty of excise leviable thereon or are chargeable to nil rate of duty, and

(ii) unless—

(a) duty has been paid for such material or component parts under the same item or sub-item as the finished excisable goods; or

(b) remission or adjustment of duty paid for such material or component parts has been specifically sanctioned by the Central Government:

Provided further that if the duty paid on such material or component parts (of which credit has been allowed under this sub-

> rule) be varied subsequently due to any reason, resulting in payment of refund to, or recovery of more duty from, the manufacturer or importer, as the case may be, of such material or component parts, the credit allowed shall be varied accordingly by adjustment in the credit account maintained under sub-rule (3) or in the account- current maintained under sub-rule (3) or Rule 9 or Rule 178(1) or, if such adjustment be not possible for any reason, by cash recovery from or, as the case may be, refund to the manufacturer availing of the procedure contained in this rule."

19. This court held that when the provisos 1 & 2 are separated by conjunctive word "and", they have to be read conjointly. The requirement of both the proviso has to be satisfied to avail the benefit. Paragraph 8 is as follows:-

> "8. The language of the rule is plain and simple. It does not admit of any doubt in interpretation. Provisos (i) and (ii) are separated by the use of the conjunction "and". They have to be read conjointly. The requirement of both the provisos has to be satisfied to avail the benefit. Clauses (a) and (b) of proviso (ii) are separated by the use of an "or" and there the availability of one of the two alternatives would suffice. Inasmuch as cement and asbestos fibre used by the appellants in the manufacture of their finished excisable goods are liable to duty under different tariff items, the benefit of pro forma credit extended by Rule 56-A cannot be availed of by the appellants and has been rightly denied by the authorities of the Department."

20. Thus, applying the above principle of interpretation on condition Nos. 1 & 2 of Section 364A which is added with conjunction "and", we are of the view that condition No.2 has also to be fulfilled before ingredients of Section 364A are found to be established. Section 364A also indicates that in case the condition "and threatens to cause death or hurt to such person" is not proved, there are other classes which begins with word "or", those conditions, if proved, the offence will be established. The second condition, thus, as noted above is divided in two parts- (a) and 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.

21. Now, we may look into few cases of this Court where different ingredients of Section 364A came for consideration. We may first notice the judgment of this Court in Malleshi Vs. State of Karnataka, (2004) 8 SCC 95. The above was a case where kidnapping of a major boy was made by the accused for ransom and before this Court argument was raised that demand of ransom has not been established. In the above case, the Court referred to Section 364A and in paragraph 12 following was observed:-

> "12. To attract the provisions of Section 364-A what is required to be proved is: (1) that the accused kidnapped or abducted the person; (2) kept him under detention after such kidnapping and abduction; and (3) that the kidnapping or abduction was for ransom. Strong reliance was placed on a decision of the Delhi

> High Court in Netra Pal v. State (NCT of Delhi) [2001 Cri LJ 1669 (Del)] to contend that since the ransom demand was not conveyed to the father of PW 2, the intention to demand was not fulfilled."

22. This court in paragraphs 13 to 15 dealt with demand for ransom and held that demand originally was made to person abducted and the mere fact that after making the demand the same could not be conveyed to some other person as the accused was arrested in meantime does not take away the effect of conditions of Section 364A. In the above case, this Court was merely concerned with ransom, hence, other conditions of Section 364A were not noticed.

23. The next judgment is Anil alias Raju Namdev Patil Vs. Administration of Daman & Diu, Daman and Another, (2006) 13 SCC 36. In the above case, this Court noticed the ingredients for commission of offence under Section 364 and 364A. Following was laid down in paragraph 55:-

> "55. ……for obtaining a conviction for commission of an offence under Section 364-A thereof it is necessary to prove that not only such kidnapping or abetment has taken place but thereafter the accused threatened to cause death or hurt to such person or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt or causes hurt or death to such person in order to compel the Government or any foreign State or international intergovernmental organisation or any other person to do or abstain from doing any act or to pay a ransom."

24. At this stage, we may also notice the judgment of this Court in Suman Sood alias Kamaljeet Kaur Vs. State of Rajasthan (2007) 5 SCC 634. In the above case, Suman Sood and her husband Daya Singh Lahoria were accused in the case of abduction. They were tried for offence under Section 364A, 365, 343 read with Section 120-B and 346 read with Section 120-B. The trial court convicted the appellant for offence under Sections 365 read with 120-B, 343 read with 120-B and 346 read with 120-B. She was, however, acquitted for offence punishable under Section 364-A. Her challenge against conviction and sentence for offences punishable under Sections 365 read with 120- B, 343 read with 120-B and 346 read with 120-B IPC was negatived by the High Court. But her acquittal for offences punishable under Sections 364-A read with 120-B was set aside by the High Court in an appeal and she was also convicted for the offence under Section 364A and was sentenced to life imprisonment. In the appeal filed by her challenging her conviction under Section 364A, this Court dealt with acquittal of Suman Sood under Section 364A by trial Court. In Paragraph 64 this court noticed as follows:-

> "64. According to the trial court, the prosecution had failed to prove charges against Suman Sood for an offence punishable under Sections 364-A or 364-A read with 120-B IPC "beyond reasonable doubt" inasmuch as no reliable evidence had been placed on record from which it could be said to have been established that Suman Sood was also a part of "pressurise tactics" or had

terrorised the victim or his family members to get Devendra Pal Singh Bhullar released in lieu of Rajendra Mirdha. The trial court, therefore, held that she was entitled to benefit of doubt."

25. The findings of trial court that no reliable evidence had been placed on record from which it could be said to have been established that Suman Sood was also a part of pressurise tactics or has terrorized the victim or his family. This court approved the acquittal of Suman Sood by trial court and set aside the order of the High Court convicting Suman Sood. In paragraph 71 following was held by this Court:-

"71. On the facts and in the circumstances in its entirety and considering the evidence as a whole, it cannot be said that by acquitting Suman Sood for offences punishable under Sections 364-A read with 120-B IPC, the trial court had acted illegally or unlawfully. The High Court, therefore, ought not to have set aside the finding of acquittal of accused Suman Sood for an offence under Sections 364-A read with 120-B IPC. To that extent, therefore, the order of conviction and sentence recorded by the High Court deserves to be set aside."

26. Thus, the trial court's findings that there was no evidence that Suman Sood was part of pressurize tactics or terrorized the victim or his family members, hence, due to non-fulfillment of the condition as enumerated in Section 364A, the trial court recorded the acquittal, which has been confirmed by this Court. The above case clearly establishes that unless all conditions as enumerated in Section 364A are fulfilled, no conviction can be recorded.

27. Now, we come to next judgment, i.e., Vishwanath Gupta Vs. State of Uttaranchal (2007) 11 SCC 633. In the above case, the victims were abducted from district of Lucknow, State of U.P. demands for ransom and threat was extended from another district, i.e., Nainital and the victim was done to death in another district, i.e., Unnao in the State of U.P. This Court had occasion to consider the ingredients of Section 364A and in paragraphs 8 and 9, the following was laid down:-

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

9. The important ingredient of Section 364-A is the abduction or kidnapping, as the case may be. Thereafter, a threat to the kidnapped/abducted that if the demand for ransom is not met then the victim is likely to be put to death and in the event death is caused, the offence of Section 364-A is complete. There are three stages in this section, one is the kidnapping or abduction, second is threat of death coupled with the demand of money and lastly when the demand is not met, then causing death. If the three

ingredients are available, that will constitute the offence under Section 364-A of the Penal Code. Any of the three ingredients can take place at one place or at different places. In the present case the demand of the money with the threat perception had been made at (Haldwani) Nainital. The deceased were kidnapped at Lucknow and they were put to death at Unnao. Therefore, the first offence was committed by the accused when they abducted Ravi Varshney and Anoop Samant at Lucknow. Therefore, Lucknow court could have territorial jurisdiction to try the case."

28. This Court in the above case, laid down that there are three stages in the Section, one is kidnapping or abduction, second is threat of death coupled with demand of money and third when the demand is not met, then causing death. The Court held that if the three ingredients are available that will constitute the offence under Section 364 of the IPC. Dealing with Section 364A in context of above case, following was laid down in paragraph 17:-

"17. ……But here, in the case of Section 364-A something more is there, that is, that a person was abducted from Lucknow and demand has been raised at Haldwani, Nainital with threat. If the amount is not paid to the abductor then the victim is likely to be put to death. In order to constitute an offence under Section 364-A, all the ingredients have not taken place at Lucknow or Unnao. The two incidents took place in the State of Uttar Pradesh, that is, abduction and death of the victims but one of the ingredient took place, that is, threat was given at the house of the victims at Haldwani, Nainital demanding the ransom money otherwise the victim will be put to death. Therefore, one of the ingredients has taken place within the territorial jurisdiction of Haldwani, Nainital. Therefore, it is a case wherein the offence has taken place at three places i.e. at Haldwani, Nainital, where the threat to the life of the victim was given and demand of money was raised, the victim was abducted from Lucknow and he was ultimately put to death at Unnao. ……."

29. Next case which needs to be noticed is a Three Judge Bench Judgment of this Court in Vikram Singh alias Vicky and Anr. Vs. Union of India and Ors., (2015) 9 SCC 502. In the above case, this Court elaborately considered the scope and purport of Section 364A including the historical background. After noticing the earlier cases, this Court laid down that section 364A has three distinct components. In Paragraph 25, following was laid down with regard to distinct components of Section 364A:-

"25. ……Section 364-A IPC has three distinct components viz. (i) the person concerned kidnaps or abducts or keeps the victim in detention after kidnapping or abduction; (ii) threatens to cause death or hurt or causes apprehension of death or hurt or actually hurts or causes death; and (iii) the kidnapping, abduction or detention and the threats of death or hurt, apprehension for such death or hurt or actual death or hurt is caused to coerce the

person concerned or someone else to do something or to forbear from doing something or to pay ransom……..."

30. We may also notice one more Three Judge Bench Judgment of this Court in Arvind Singh Vs. State of Maharashtra, (2020) SCC Online SC 400. In the above case, an eight year old son of Doctor Mukesh Ramanlal Chandak (PW1) was kidnapped by the accused A1 and A2. Accused A1 was an employee of Dr. Chandak. It was held that A1 had grievance against Dr. Chandak. A2 who accompanied A1 when the boy was kidnapped and after the kidnapping of the boy it was found that boy was murdered and at the instance of A1, the dead body was recovered from a bridge constructed over a Rivulet. Trial court had sentenced both A1 and A2 to death for the offences punishable under Sections 364A read with 34 and 302 read with 34. The High Court had dismissed the appeal affirming the death sentence. On behalf of A2, one of the arguments raised before this Court was that although child was kidnapped for ransom but there was no intention to take the life of the child, therefore, offence under Section 364A is not made out. This Court noticed the ingredients of Section 364A, one of which was "threatening to cause death or hurt" in paragraphs 90, 91 and 92, the following was observed:-

"92. An argument was raised that the child was kidnapped for ransom but there was no intention to take life of the child, therefore, an offence under Section 364A is not made out. To appreciate the arguments, Section 364A of the IPC is reproduced 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 intergovernmental 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."

93. Section 364A IPC has three ingredients relevant to the present appeals, one, the fact of kidnapping or abduction, second, threatening to cause death or hurt, and last, the conduct giving rise to reasonable apprehension that such person may be put to death or hurt.

94. The kidnapping of an 8-year-old child was unequivocally for ransom. The kidnapping of a victim of such a tender age for ransom has inherent threat to cause death as that alone will force the relatives of such victim to pay ransom. Since the act of kidnapping of a child for ransom has inherent threat to cause death, therefore, the accused have been rightly been convicted for an offence under Section 364A read with Section 34 IPC. The threat will remain a mere threat, if the victim returns unhurt. In the

present case, the victim has been done to death. The threat had become a reality. There is no reason to take different view that the view taken by learned Sessions Judge as well by the High Court."

31. We need to refer to observations made by Three Judge Bench in paragraph 92 where this Court observed that kidnapping of an eight year old victim for ransom has inherent threat to cause death as it alone will force the relatives of victim to pay ransom. The Court further held that since the act of kidnapping of a child has inherent threat to cause death, therefore, the accused have been rightly convicted for an offence under Section 364A read with Section 34 IPC. In the next sentence, the Court held that the threat will remain a mere threat, if the victim returns unhurt, "the victim has been done to death the threat has become a reality".

32. The above observation made by Three Judge Bench has to be read in context of the facts of the case which was for consideration before this Court. No ratio has been laid down in paragraph 92 that when an eight year old child (or a child of a tender age) is kidnapped/abducted for ransom there is inherent threat to cause death and the second condition as noted above, i.e., threatens to cause death or hurt to such person, is not to be proved. The observations cannot be read to mean that in a case of kidnapping or abduction of an eight year old child (or child of a tender age), presumption in law shall arise that kidnapping or abduction has been done to cause hurt or death. Each case has to be decided on its own facts. In the foregoing paragraphs, we have noticed that all the three distinct conditions enumerated in Section 364A have to be fulfilled before an accused is convicted of offence under Section 364A. Thus, the observations in paragraph 92 may not be read to obviate the establishment of second condition as noticed above for bringing home the offence under Section 364A.

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 organization 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 364A cannot be sustained."

41. Now, coming to the second part of the condition No.2, i.e., "or by his conduct gives rise to a reasonable apprehension that such person may be

> put to death or hurt". Neither there is any such conduct of the accused discussed by the Courts below, which may give a reasonable apprehension that victim may be put to death or hurt nor there is anything in the evidence on the basis of which it can be held that second part of the condition is fulfilled. We, thus, are of the view that evidence on record did not prove fulfillment of the second condition of Section 364A. Second condition is also a condition precedent, which is requisite to be satisfied to attract Section 364A of the IPC.
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> **42.** The Second condition having not been proved to be established, we find substance in the submission of the learned Counsel for the appellant that conviction of the appellant is unsustainable under Section 364A IPC. We, thus, set aside the conviction of the appellant under Section 364A. However, from the evidence on record regarding kidnapping, it is proved that accused had kidnapped the victim for ransom, demand of ransom was also proved. Even though offence under Section 364A has not been proved beyond reasonable doubt but the offence of kidnapping has been fully established to which effect the learned Sessions Judge has recorded a categorical finding in paragraphs 19 and 20. The offence of kidnapping having been proved, the appellant deserves to be convicted under Section 363. Section 363 provides for punishment which is imprisonment of either description for a term which may extend to seven years and shall also be liable to fine. "

26. In the present case PW-2 have stated in his evidence that at about 07:00 p.m. he received a ransom call from one Sunita's number in his mobile phone and after preliminary inquiry he demanded Rs. 3 lakh as ransom. When he went to the place where he was being called by the kidnapper and made a telephonic call to him, he asked to give Rs. 3 lakh and threatened him if he will not give him ransom, his son would be killed. PW-2 Shravan Sahu lodged a report to the police on 14.03.2019 itself at about 20:30 hours, he did not disclose that the appellant has kidnapped his minor son, whereas from the evidence of PW-6 Shivbati Sahu who is one of the close relative, she disclosed him that the appellant took his son with him at about 06:00 p.m. When the witness PW-6 Shivbati Sahu stated that she saw the appellant taking the victim with him and informed the PW-2 about the incident then the name of the appellant should have come in the FIR also that he kidnapped the victim but the FIR has been lodged against the unknown persons. Though it has been mentioned in the contents of the FIR that the

aunt of the complainant informed him that one person who covered his face by towel took the victim with him with respect to the ransom call, except the evidence of PW-2 there is no other evidence. Although the mobile call details is there in the case but what conversation they have been made it has not been proved. The parties are closely related and the dispute between them with respect to the partition of the property was going on. Since the parties are closely related, it appears that from the evidence of PW-2 itself that there is no other dispute between these two families, the telephonic call between them is quite usual and it cannot be connected that a ransom call was being made by the appellant. From the evidence of PW-2 his adamant attitude reflects that when the father of the appellant asked (PW-2) to get his son release from the jail he stuck by saying that first he will get the land separated then he will see what to do. In such a situation false implication of the appellant for kidnapping for ransom cannot be ruled out in absence of any other corroborative evidence.

27. Further from the evidence of PW-4, it also reveals that the appellant has not threatened the victim nor any ransom call was made in his presence and he is unaware about any ransom call. From the evidence PW-4 it also appears that the appellant had talk to the persons through mobile phone from some distance of him and at that time he could flee from the place but he did not do so. Further the ransom letter allegedly seized from the door of the appellant vide seizure memo Ex.-P/5 has not been relied upon by the prosecution that it was actually written by the appellant to commit the offence. The prosecution or complainant would insisted to prove the same because that would be the best evidence available with the prosecution to prove the ransom call by proving the handwriting over it that it was written by the appellant but the prosecution did not tried to prove the same.

28. Therefore, in the facts and circumstances of the case in absence of any clinching evidence with respect to the demand of ransom and ransom call

allegedly made to the father of the victim, the appellant cannot be convicted for kidnapping for ransom rather he can be convicted for kidnapping with intend to wrongfully confined the person which comes under the offence of Section 365 of I.P.C.

29. Therefore, this Court is of the opinion that the prosecution has able to prove the offence against the appellant under Section 363 and 365 of I.P.C. instead of Section 364-A of I.P.C. and thus the appellant is convicted for the offence under Section 363 and 365 of I.P.C. and sentenced for the offence under Section 363 of I.P.C. for RI for 01 year with fine of Rs. 500/- in default of payment fine additional RI for 01 month and for offence of Section 365 of I.P.C. RI for 05 years with fine of Rs. 1000/- in default of payment of fine further RI for 02 months.

30. The appellant is reported to be in jail since 22.06.2021. During trial he was remained in jail from 15.03.2019 to 01.09.2020. The appellant is entitled for set-off of his undergone period.

31. With the aforesaid modification/observation the appeal is **partly allowed**.

32. Registry is directed to send a copy of this judgment to the concerned Superintendent of Jail where the appellant is undergoing his jail sentence to serve the same on the appellant informing him that he is at liberty to assail the present judgment passed by this Court by preferring an appeal before the Hon’ble Supreme Court with the assistance of High Court Legal Services Committee or the Supreme Court Legal Services Committee.

33. Let a copy of this judgment and the original records be transmitted to the trial Court concerned forthwith for necessary information and compliance.

Sd/-

(Ravindra Kumar Agrawal)
Judge

Sd/-

(Ramesh Sinha)
Chief Justice

Alok

Headnote

Three ingredients are requires for the offence of Section 364-A I.P.C., one is kidnapping or abduction, second is threat of death coupled with the demand of money and thirdly when the demand is not made, then causing death or hurt and if all these three ingredients are available that will constitute the offence under Section 364-A of I.P.C. and in absence of any one of the mandatory conditions the accused cannot be convicted.