**SHAIK AHMED**

**v.**

**STATE OF TELANGANA**

(Criminal Appeal No. 533 of 2021)

JUNE 28, 2021

**[ASHOK BHUSHAN* AND R. SUBHASH REDDY, JJ.]**

*Penal Code, 1860: s.364A – Essential ingredients – For covering an offence under s.364A, apart from fulfillment of first condition i.e. "whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction", the second condition, i.e., "and threatens to cause death or hurt to such person" also needs to be proved in situation the case is not covered by subsequent clauses joined by "or".*

*Penal Code, 1860: s.364A – Prosecution case was that accused kidnapped 13 years old school boy (PW-2) and telephoned to his father (PW-1) demanding Rs.2 lakhs for release of PW-2 – Sessions Judge held that prosecution clearly established the guilt of the accused for the offence under s.364A IPC and sentenced him to undergo life imprisonment – High Court dismissed the appeal holding that prosecution clinchingly proved the guilt of the accused beyond all reasonable doubt for the offence punishable under s.364A – On appeal, held: High Court did not deal with the grounds taken before it by the accused that no threat to cause death or hurt was extended by him – There was no finding regarding fulfillment of second condition of s.364A – In the cross-examination, the complainant, father of the kidnapped boy has categorically stated that his son was not physically assaulted nor the boy complained of bad behavior or assault – Even, PW-2, the victim himself in his cross examination stated that he was not assaulted rather was treated in a good manner – Thus, neither PW-1, the father of the victim nor the victim said that any accused threatened to cause death or hurt – Neither there was any such conduct of the accused discussed by the courts below to give a reasonable apprehension that victim may be put to death or hurt nor there was anything in the evidence on the basis of which it can be held that second part of the condition was fulfilled – The second condition having*

* Author

*not been proved to be established, conviction of the appellant is unsustainable under s.364A and is set aside – However, from the evidence on record regarding kidnapping, it is proved that accused had kidnapped the victim for ransom and demand of ransom was also proved – Thus, the offence of kidnapping has been fully established to which effect the trial court has recorded a categorical finding – Appellant is liable to conviction under s.363.*

**Partly allowing the appeal, the Court Held:**

**1.1 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". [Para 13]**

**1.2 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. 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". 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. [Paras 14, 15 and 16]**

*Punjab Produce and Trading Co. Ltd. v. The CIT, West Bengal, Calcutta* **(1971) 2 SCC 540 (17);** *Hyderabad Asbestos Cement Products and Anr. v. Union of India* **(2000) 1 SCC 426 : [1999] 5 Suppl. SCR 155 (19) – relied on**

**1.3 Applying the principle of interpretation on condition Nos. 1 and 2 of Section 364A which is added with conjunction "and", 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. [Para 21]**

*Malleshi v. State of Karnataka* **(2004) 8 SCC 95 : [2004] 4 Suppl. SCR 441;** *Anil alias Raju Namdev Patil v. Administration of Daman & Diu, Daman and Another* **(2006) 13 SCC 36 : [2006] 9 Suppl. SCR 466;** *Suman Sood alias Kamaljeet Kaur v. State of Rajasthan* **(2007) 5 SCC 634 : [2007] 6 SCR 499;** *Vishwanath Gupta v. State of Uttaranchal* **(2007) 11 SCC 633: [2007] 4 SCR 332;** *Vikram Singh alias Vicky and Anr. v. Union of India and Ors.* **(2015) 9 SCC 502 : [2015] 10 SCR 816;** *Arvind Singh v. State of Maharashtra* **(2020) SCC Online SC 400 – referred to.**

**2.1 The Sessions judge held that it is clearly established that the accused kidnapped PW-2 and telephoned PW-1 and demanded Rs.2 lakhs for release of PW-2. On this finding, the Sessions Judge jumped to the conclusion that prosecution has clearly proved the case for conviction under Section 364A. There are no findings recorded by Sessions Judge that condition no. 2 was also fulfilled. The High Court has not dealt with the grounds taken before it by the accused that no threat**

**to cause death or hurt was extended by the accused. From the judgment of the High Court, thus, it can be said that there is no finding regarding fulfillment of condition No.2. Both the Courts having not held that condition No.2 was found established on the evidence led before the Court the conviction under Section 364A become unsustainable. [Paras 37, 39]**

**2.2 The complainant, PW-1, in his cross examination, stated "my son was not physically assaulted……. My son did not complain me about bad behavior or assault of anything. My son was kept in a good health and without any kind of problem to my son." In his cross examination, victim states:- "I was not assaulted nor having stab, beating on my body. They treated me in a good manner." Thus, neither PW-1, the father of the victim, the complainant, nor the victim says that any accused threatened to cause death or hurt. Now, the second part of the condition No.2 is "or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt". Thus, evidence on record did not prove fulfillment of the second condition of Section 364A. The Second condition having not been proved to be established, conviction of the appellant is unsustainable under Section 364A IPC. However, from the evidence on record regarding kidnapping, it is proved that accused had kidnapped victim for ransom, demand of ransom was also proved. The appellant deserves to be convicted under Section 363. [Paras 40, 41, 42, 43]**

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 533 of 2021

From the Judgment and Order dated 06.08.2019 of the High Court for the State of Telangana in Criminal Appeal No. 1121 of 2012.

Pai Amit, Saurabh Agrawal, Vamshi Rao, Ms. Komal Mundhra, Shantanu Singh, Advs. for the Appellant.

Ms. Bina Madhavan, S. Udaya Kumar Sagar, Ms. Sweena Nair, Advs. for the Respondent.

The Judgment of the Court was delivered by

**ASHOK BHUSHAN, J.**

Leave granted.

2. This appeal has been filed by the accused challenging the judgment of the High Court dated 06.08.2019 by which Criminal Appeal No. 1121 of 2012 filed by the appellant questioning his conviction and sentence under Section 364A IPC has been dismissed.

3. The prosecution case in brief is :-

3.1 The victim, PW-2 Prateek Gupta, was a student in VIth standard in St. Mary's High School, Rezimental Banzar, Secunderabad, Hyderabad. On 03.02.2011, PW-2 went to a picnic organised by the school and returned to school at around 3:00 pm. Usually, PW-2 would wait for a regular (fixed) auto to drop him home from school but unfortunately on the said date, the same did not turn up.

3.2 PW-2 waited till about 4.00 pm and thereafter PW-2 phoned his father (PW-1) from the cell phone of his school teacher (PW-3). PW-1 instructed PW-2 to take another auto to go home. PW-1 engaged the services of an auto driven by the accused (appellant herein) to take him home and boarded the auto.

3.3 Thereafter, the accused took him from an unknown route by informing PW-2 it is a short cut and took him to some unknown place by promising that he would call PW-1 and ascertain the correct address, after which he would drop PW-2 at home. It is alleged that the accused took PW-2 to the house of his sister, PW-6, and told PW-2 that he would drop him at his home in the morning of the next day. Thereafter, the accused allegedly called PW-1 stating that he had PW-2 in his custody and demanded a ransom of Rs.2 lakhs to release PW-2.

3.4 On the same day at about 8.30 pm the accused again called PW-1 and reiterated his demand for release of PW-2. PW-1 conveyed his inability to pay the ransom amount, subsequent to which the accused demanded a sum of Rs. 1.50 lakhs for the release of PW-2. PW-1 after receiving the phone call went to the police station and lodged report, which was marked as Ex.P-1. The same was received and a case being CV No.

37/2011 u/s 364S of IPC was registered and handed over for further investigation.

3.5 As per the prosecution, at about 6:00 am the Accused along with PW-2 left to Borabanda from his sister's house in an Auto and while travelling called PW-1 from the phone of the auto driver (PW-5) to enquire about the status of the ransom money. PW-1 was instructed to come to Pillar No 99, P.V. Narsimha Rao Expressway on foot and raise his hand for identification. When PW-1 reached the location, he found the accused present at the spot and raised his hand. When PW-1 was trying to handover the ransom to the accused, the police who were in mufti surrounded the accused and took him into custody. The police seized 2 cell phones, ID cards and Rs.200/- (Rupees Two Hundred Only) from the accused.

3.6 The police found the victim seated in an auto a short distance away, who was taken to the police station and statement under Section 161, Cr.P.C. of the victim (PW-2) was recorded at P.S. Gopalapuram. After investigation, charge sheet was filed against the appellant under Section 364A IPC. Charge was framed by the Additional Chief Metropolitan Magistrate, Secunderabad against the accused under Section 364A IPC. After appearance of the accused, learned Additional Chief Metropolitan Magistrate committed the case to the learned Sessions Judge. Prosecution examined eight witnesses, the father of the victim and defacto complainant, Sanjay Gupta was examined as PW-1. Prateek Gupta, the victim was examined as PW-2. Kumari Sujata Rani, the school teacher was examined as PW-3, who proved that from her cell phone, the victim had spoken to his father, who informed the victim to come by taking another auto. PW-4, Krishna Yadav and PW-7 were examined as Panch witnesses. PW-5 was examined as auto driver, who, on asking of accused took the accused and victim to Pillar No.78 of P.V.N.H. PW-8, the Sub-inspector of police, K. Ramesh, who was I.O. PW6 was another witness. Prosecution marked Exh.P1 to P4 and M.O.1 to 3.

3.7 After recording evidence of prosecution, the accused was examined under Section 313 Cr.P.C. On behalf of defence Exh. D1 and D2 were marked.

3.8 Learned Sessions Judge after considering the evidence led by witnesses held that accused kidnapped PW-2 and telephoned to PW-1 demanding Rs.2 lakhs for release of PW-2. The learned Sessions Judge held that prosecution clearly established the guilt of the accused for the offence under Section 364A IPC. After recording conviction, he was sentenced to undergo life imprisonment for offence under Section 364A IPC and also liable to pay fine of Rs.5,000/- by judgment dated 01.11.2012.

3.9 The appellant filed an appeal before the High Court. The appeal has been dismissed by the High Court by the impugned judgment dated 06.08.2019. The High Court held that PW-2 was kidnapped by the accused and ransom of Rs.2 lakhs was demanded from PW-1. When the appellant-accused came to collect the ransom amount demanded, he was apprehended by the police. High Court held that prosecution clinchingly proved the guilt of the accused beyond all reasonable doubt for the offence punishable under Section 364A of IPC. The appeal was accordingly dismissed.

4. Learned counsel for the appellant submitted that the prosecution failed to prove all ingredients for conviction under Section 364A, hence the conviction under Section 364A is not sustainable. Learned counsel submits that there was neither any evidence nor any findings returned by the Courts below that any threat was extended by the accused to cause death or hurt to the victim nor his conduct gave rise to reasonable apprehension that such person may be put to death or hurt. He submits that neither the learned Sessions Judge nor the High Court adverted to the above essential conditions for conviction under Section 364A, hence the judgment of the Courts below deserves to be set aside.

5. Learned counsel for the appellant referring to the statement of PW-2, the victim submits that victim himself in his statement has stated that he was treated in a good manner. PW-1 in his statement has also not alleged that any threat was extended to cause death or hurt to the victim.

6. Learned counsel appearing for the State, Ms. Bina Madhavan supported the judgments of learned Sessions Judge as well as the High Court and took us to the statements of PW-1, PW-2 and PW- 8.

She submits that conviction under Section 364A of the accused does not deserve any interference by this Court.

7. From the submissions made by the learned counsel for the parties and materials on record, following questions arise for consideration in this appeal:-

   I. What are the essential ingredients of Section 346A to be proved beyond reasonable doubt by the prosecution for securing the conviction of an accused under Section 364A IPC?

   II. Whether each and every ingredient as mentioned under Section 364A needs to be proved for securing conviction under Section 364A and non-establishment of any of the conditions may vitiate the conviction under Section 364A IPC?

   III. Whether the learned Sessions Judge as well as the High Court recorded any finding that all ingredients of Section 364A were proved by the prosecution?

   IV. Whether there was any evidence or findings by the Courts below that the accused had threatened to cause death or hurt to the victim or by his conduct gave rise to a reasonable apprehension that victim may be put to death or hurt?

8. The appeal having arisen out of order of conviction under Section 364A, we need to notice the provisions of Section 364A IPC before proceeding further to consider the points for consideration.

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

10. 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 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.** 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:-

> "364A. 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."

11. 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. 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."

13. 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.

14. 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.

15. 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".

16. 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. Crawfordon 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."

17. 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."

18. 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....."

19. 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."

20. 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."

21. 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.

22. 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."

23. 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.

24. 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."

25. 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."

26. 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."

27. 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.

28. 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."

29. 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. ……"

30. 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……..."

31. 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:-

"**90.** 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:

"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 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."

**91.** 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.

**92.** 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."

32. 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". 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.

34. 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.

35. The second condition which is "and threatens to cause a death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt" is relevant for consideration in this case since appellant has confined his submission only regarding non-fulfillment of this condition. We may also notice that the appellant has filed grounds of appeal before the High Court in which following was stated in grounds No. 6 and 7:-

"6. The learned Judge failed to see that PW-2 stated that he was treated well and as such there was no threat to cause death or hurt.

7. The learned Judge should have seen that PW-1 did not state that the accused threatened to cause death or hurt to his son."

36. Now, we may first look into the judgment of the learned Sessions Judge regarding consideration of fulfillment of second condition and the findings recorded in that regard by learned Sessions Judge. The Judgment of the learned Sessions Judge indicates that from paragraphs 12 to 19, the learned Sessions Judge has noticed the evidences of different witnesses and in paragraph 20 following findings have been recorded:-

"**20.** The learned counsel for the defence contended that the prosecution evidence are not at all sufficient to establish the guilt of the accused for the charge leveled against him. He further contended that the accused is not real culprit a false case was foisted against him and he was no way connected to the alleged kidnap. The said

testimony of PWs 1 to 5 and PW-8 coupled with Ex.P.1 to P.4 and M.O.1 to 3 it clearly established that the accused kidnapped PW-2 and telephoned to PW-1 and demanded Rs. Two Lakhs for the release of the PW-2. So the prosecution clearly establishes the guilt of the accused for the offence under Section 364(A) of IPC and he is liable to be convicted. Accordingly, this point is answered in favour of the prosecution and against the accused."

37. The findings in paragraph 20 reveals that the learned Sessions judge held that it is clearly established that the accused kidnapped PW-2 and telephoned PW-1 and demanded Rs.2 lakhs for release of PW-2. On this finding, the learned Sessions Judge jumped to the conclusion that prosecution has clearly proved the case for conviction under Section 364A. There are no findings recorded by learned Sessions Judge that condition no. 2 was also fulfilled.

38. The High Court in its judgment has also in para 27 observed:-

"**27.** There is cogent, convincing and overwhelming evidence on record to connect the appellant/accused with the alleged offence. The prosecution clinchingly proved the guilt of the accused beyond all reasonable doubt for the offence punishable under Section 364A of IPC. The Court below had meticulously analysed the entire evidence on record and rightly convicted and sentenced the appellant/accused, basing on the oral and documentary evidence. There is nothing to take a different view. All the contentions raised on behalf of the appellant/accused do fail. The Criminal Appeal is devoid of merit and is liable to be dismissed."

39. The High Court has not dealt with the grounds taken before it by the accused that no threat to cause death or hurt was extended by the accused. From the judgment of the high court, thus, it can be said that there is no finding regarding fulfillment of condition No.2. Both the Courts having not held that condition No.2 as noted above was found established on the evidence led before the Court the conviction under Section 364A become unsustainable. The present is not a case where applicability of condition No.(iii), i.e., "or causes hurt or death" is even claimed. Thus, fulfillment of condition No.(ii) was necessary for conviction under Section 364A.

40. We, however, proceed to examine the evidence on record to satisfy ourselves as to whether there was any evidence from which it can

be proved that condition No.2, i.e., "threatens to cause death or hurt or conduct of the accused gives rise to a reasonable apprehension that victim may be put to death or hurt" was established. The complainant, PW-1, in his cross examination, stated "my son was not physically assaulted…… My son did not complain me about bad behavior or assault of anything. My son was kept in a good health and without any kind of problem to my son." PW-2, the victim himself was examined, who was 13 years of age at the time of examination. In his cross examination, victim states:- "I was not assaulted nor having stab, beating on my body. They treated me in a good manner."

41. Thus, neither PW-1, the father of the victim, the complainant, nor the victim says that any accused threatened to cause death or hurt. The evidence which was led before the court suggest otherwise that the victim was not assaulted and he was treated well in a good manner as was stated by victim.

42. 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.

43. 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.

44. In the facts of the present case, we are satisfied that the appellant deserves to be sentenced with imprisonment of seven years and also liable to pay fine of Rs. 5,000/-. The Judgment of the learned Sessions Judge and the High Court is modified to the above extent. The conviction and sentence of the appellant under Section 364A is set aside. The appellant is convicted for offence under section 363 of kidnapping and sentenced to imprisonment of seven years and fine of Rs.5,000/-. After completion of imprisonment of seven years (if not completed already) the appellant shall be released.

The appeal is partly allowed to the above extent.

*Headnotes prepared by:* Devika Gujral

*Result of the case:*
Appeal partly allowed.