

A

VINOD

v.

STATE OF HARYANA

(Criminal Appeal No. 165/2008)

JANUARY 24, 2008

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[DR. ARIJIT PASAYAT AND P. SATHASIVAM, JJ.]

Penal Code, 1860:

C

s. 364 A – Kidnapping of boy aged 9 years for ransom – Conviction u/s. 364 A and sentence of life imprisonment by courts below – Interference with – Held: Not called for – Prosecution clearly established commission of offence of kidnapping – Legislature prescribes stringent sentence for kidnapping – Sentence/sentencing.

D

s. 364 A – Kidnapping for ransom – Necessary ingredients – Stated.

ss. 359 and 362 – ‘Kidnapping’ and ‘Abduction’ – Distinction between.

E

Words and phrases: ‘Demand’ – Meaning of.

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According to the prosecution case, PW-2-son of PW-1, aged 9 years was kidnapped for a ransom of Rs. 10 lakhs. On the fateful day, when PW 2 did not return from play, PW-1 lodged an FIR. After few days, PW. 4 and S apprised PW-1 that Y had received a call for ransom of Rs. 10 lakhs from the abductors for release of PW 2 and also apprised the manner in which money was to be paid; and that the police was not to be informed otherwise PW-2 would be killed. PW-1, PW-4 and S arranged the ransom amount and the first and last notes were initialed as ‘MM’ by PW 1. Then as instructed by abductors, Y took the bag containing currency notes in the car and brought back PW 2 and handed him over to PW 1. PW-2 narrated the

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entire incident of kidnapping to PW 1. Thereafter, on basis of disclosure made by PW 2, police apprehend the accused. On the disclosure statement made by the accused, ransom amount was recovered from the place indicated by them. Y was also apprehended and part of the ransom amount was recovered from him. All the accused were charged under section 364A IPC. Prosecution witnesses were examined. On evidence of victim PW-2, PW-1 and PW-3, the accused were found guilty and sentenced to life imprisonment. The High Court upheld the order. Hence the present appeal.

Dismissing the appeal, the Court

HELD: 1.1 The Section 364 A IPC refers to both 'Kidnapping' and 'Abduction'. Section 359 defines 'Kidnapping'. As per the said provision there are two types of kidnapping i.e. (1) kidnapping from India; and (2) kidnapping from lawful guardianship. Abduction is defined in Section 362. The provision envisages two types of abduction i.e. (1) by force or by compulsion; and/or (2) inducement by deceitful means. The object of such compulsion or inducement must be the going of the victim from any place. The offence of abduction is a continuing offence. [Paras 15, 16 and 18] [1153-A, B, C & D]

1.2 The Section 364-A provides punishment for kidnapping, abduction or detaining for ransom. To attract the provisions of section 364-A what is required to be proved is (1) that the accused kidnapped or abducted the person; and (2) kept him under detention after such kidnapping and abduction; and (3) that the kidnapping or abduction was for ransom. [Paras 18 and 19] [1153-E & F]

1.3 The word 'demand' means 'to claim as one's due', 'to require'; 'to ask relief'; 'to summon'; 'to call in Court'; "an imperative request preferred by one person to another requiring the latter to do or yield something or to abstain

A from some act;" "an asking with authority, claiming." The definition would show that the demand has to be communicated. It is an imperative request or a claim made. [Para 20] [1153-G & H; 1154-A]

B *Black's Law Dictionary* – referred to.

B 1.4 When the evidence on record is analysed in the background of Section 364-A IPC, the inevitable conclusion is that the prosecution has clearly established commission of the said offence. Considering the alarming rise in kidnapping young children for ransom, the legislature has in its wisdom provided for stringent sentence. Therefore, the High Court rightly refused to interfere in the matter. The impugned judgment of the High Court does not suffer from any infirmity to warrant interference. [Para 21] [1154-B & C]

D CRIMINALAPPELLATE JURISDICTION : Criminal Appeal No. 165 of 2008.

E From the Judgment and Order dated 10.1.2006 of the High Court of Punjab and Haryana at Chandigarh in CrI. A. No. 307-DB/2001.

Prem Malhotra for the Appellant.

Rajeev Gaur 'Naseem' and T.V. George for the Respondent.

F The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Leave granted.

G 2. Challenge in this appeal is to the judgment of a Division Bench of the Punjab and Haryana High Court upholding conviction of the appellant for offence punishable under Section 364A of the Indian Penal Code, 1860 (in short the 'IPC') as recorded by the learned Additional Sessions Judge, Panipat.

H 3. By the impugned common judgment two Criminal Appeal Nos.255 and 307 of 2001 were disposed of. Ten persons including one Virender who was declared a proclaimed offender

were sent for trial. After trial all the accused except Virender, whose presence the investigating agency was not able to secure during trial were convicted under Section 364-A of IPC. They were convicted for offence punishable under Section 364-A IPC and sentenced to imprisonment for life and a fine of Rs.1,000/- with default stipulation.

4. Prosecution version as unfolded during trial is as follows:

Amit Kumar son of Madan Mohan (PW 2) was aged 9 years and on the date of the incident i.e. 29.5.1996 was studying in class III. He used to live with his father in House No.212 Old Housing Board Colony, Panipat at a distance of about 100 yards from Salarganj Gate, Panipat. At about noon time on 29.5.1996 the boy had gone to Salarganj to play with his friends and when he did not return home, the family made all efforts to trace him which proved to be futile. Apprehending that he had been kidnapped, Madan Mohan (PW-1) proceeded to the Police Station City, Panipat to lodge a report. On the way he met a police party at Sukhdev Nagar where he made his statement Ex.PA and on its basis formal FIR (Ex. PA/2) was recorded.

On 2.6.1996, Sanjiv Jain and Faqir Chand (PW-4) came and apprised Madan Mohan that Yashpal, a resident of Panipat, had come to them and told about their having received a telephonic message from Saharanpur that Amit Kumar was well but his abductors were demanding a ransom of Rs.10,00,000/- failing which they were threatening to kill Amit Kumar. The abductors had further informed Yashpal that in case the matter was reported to the Police even then Amit Kumar would be killed. Yashpal had also been apprised of the manner in which the money was required to be paid, which mode required Yashpal to travel in Car No.HR-06B-244 belonging to Sanjiv Tayal, the younger brother of Madan Mohan, display a white cloth for identification before reaching the Railway Crossing before Rampur at 10.00 p.m. On reaching there, the car was to give a signal with the dipper.

On getting this information, Madan Mohan, Sanjiv Jain and

- A Faqir Chand had decided not to report the matter to the police and had arranged for the requisite amount taking Rs.3,50,000/- from M/s Surya International (a factory owned by Madan Mohan), Rs.50,000/- from M/s Design Rug owned by the younger brothers of Madan Mohan, Rs.2 00,000/-from M/s Surya International in the name of Faqir Chand, an amount of Rs.2,75,000/- from Sintex Handicraft, Panipat in the name of wife of Madan Mohan as she was partner of the firm.

- On 3.6.1996 Sanjiv Jain and Faqir Chand had again informed Madan Mohan that Yashpal had come and told them that he had received another message that in case the amount of Rs.10,00,000/- was not paid that day itself, Amit Kumar would be killed. Yashpal had further assured them not to worry and had taken the entire responsibility for the safety of the child. Thereupon the currency notes already collected had been arranged in the denomination of Rs.500/-, Rs.100/- and Rs.50/- respectively and the first and the last notes of the bundles were initialled as "MM" by Madan Mohan. Sanjiv Jain had then called Yashpal at the residence of Madan Mohan and handed over the bag containing currency notes of Rs.10,000,000/- to him. Yashpal had taken away the bag in the car bearing registration No.HR-06B-244, which he had driven away himself.

- On 4.6.1996, Yashpal brought back Amit Kumar and handed him over to Madan Mohan. Amit Kumar told his father that on 30.5.1996 he was accosted by Virender the absconding accused, who apprised him that his father was calling him. On hearing this, Amit Kumar accompanied Virender for some distance where two young men, namely, Vinod and Sohan were positioned near a Yamaha Motor Cycle. Vinod was standing near the Motor Cycle while Sohan was sitting on the pillion. Sohan had caught hold of Amit Kumar and closed his mouth and made him sit on the motor cycle whereafter the motor cycle, was driven away by Vinod to the G.T. Road via bus stand from where it was taken to Gharaunda. When the motor cycle reached the Yamuna bridge, Amit Kumar was given water to drink and the accused threw a coin in the river. After this his abductors

took him to Railway Station Sona Arjunpur where it started raining. Thereupon they made him to sit on the ticket window. When the rain stopped, Vinod and Sohan had removed him on the motor cycle to a garden where 4/5 persons were taking liquor. One of them asked Vinod whether the work had been done and another one of them had enquired as to where Virender was, to which enquiry Vinod replied that Virender had been left at Panipat with Yashpal. The group was addressing each other by their names as Sohan, Pawan, Pappu, Jagbir, Sunder Pal and Vikas. They had served meals to Amit Kumar in the garden.

On the next day, Virender also came there and thereafter Virender and Vinod had taken Amit Kumar on the Yamaha motor cycle to the house of Vidya Sagar Chawla at Saharanpur. Vinod stayed with Amit Kumar whereas Virender used to go out at times. Vidya Sagar Chawla also remained present in the house and the entire incident was narrated by Amit Kumar to him that night. On the following day, after Virender had returned, he and Vinod took Amit Kumar to a sugar cane field on a Yamaha motor cycle. On the pavement of nearby canal, an Ambassador car was standing and then Sohan, Pawan, Pappu, Jagbir, Sunder Pal and Vinod had taken Amit Kumar for making a telephonic call to his father asking him to reach soon. On the way, Vinod had told them that the uncle of Amit Kumar and Kakku had reached and, therefore, they should escape. On hearing this, the appellants took Amit Kumar back to the sugar cane field. During the night car belonging to the uncle of Amit Kumar came back near the sugar cane field and Yashpal got down from the same. He called for the aforementioned persons where upon Amit Kumar was taken near the car. Vinod enquired from Yashpal whether everything was alright at the house of Amit Kumar and Yashpal replied in the affirmative. Vinod handed over Amit Kumar to Yashpal, who in turn handed over a bag to Vinod. Yashpal further told that they shall count for the money after some time. Yashpal thereafter took Amit Kumar to Saharanpur where meals were taken and Yashpal had left him at the residence of Madan Mohan.

A After his release, Amit Kumar had told his father that he could point out the places where he had been taken. He had also made a similar statement before the police. On 8.6.1996, Madan Mohan and his son Amit Kumar accompanied the police party. The boy had first taken them to Salarganj gate from where
B he had been kidnapped and thereafter to Sona Arjunpur Railway Station in Uttar Pradesh. From there, he had taken them to a garden where he had been kept and from there to a sugar cane field which was at some distance from the Railway Station. Thereafter, Amit Kumar had taken them to the house of Vidya
C Sagar Chawla at Saharanpur. The Police had been carrying out raids to apprehend the accused and during one such raid on 19.6.1996, in which Pawan Kumar (PW-3) had joined, the police had gone to Sona Arjunpur where a person, whose name did not come forth in the investigation, had disclosed that Sunder
D Pal and Pawan were sleeping under a tree in the field. The police had then raided the field and apprehended both of them. On interrogation, Sunder Pal made a disclosure statement (Ex.PF) that out of the ransom of Rs.50,000/-, he had spent Rs.1,000/ and had kept concealed the remaining amount of Rs.49 000/-
E wrapped in a polythene paper underneath the ground in the fields. His disclosure statement which runs into five pages interestingly incorporated the entire details of the kidnapping including the portions wherein even he had not been associated and bears his thumb impression and is attested by Pawan Kumar and Jai Narain. Pursuant to this disclosure statement
F Sunder Pal had got recovered Rs.49,000/- currency notes of the denomination of Rs.100/- which were taken into possession through recovery memo Ex.PF/1. Pawan too made an equally detailed disclosure statement Ex.PG which was reduced into writing and signed by him and attested by Pawan Kumar and
G Jai Narain in the presence of S1 Krishan Pal and subsequent thereto, he too got recovered Rs.45,000/- of the denomination of Rs.100/- each from the field indicated by him in the disclosure statement. It was taken into possession through recovery memo Ex.PG/1.

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On 20.6.1996, when Madan Mohan was standing at Mayur Chowk, a Sub Inspector, an Assistant Sub Inspector and three constables met him and they together proceeded towards the Railway Station, Panipat. When they were standing outside the cycle stand, Railway Station, Madan Mohan noticed accused Yashpal coming towards the Railway Station. Yashpal was apprehended by the police and on his personal search a country made pistol and three live cartridges from the left pocket of his trouser were recovered, which were taken into possession through recovery memo. On interrogation, in the presence of Madan Mohan, Yashpal had made a disclosure statement Ex.PB in which after giving the details of the persons involved in the kidnapping and the amount of ransom taken, he disclosed that his share in the ransom came to Rs.6,00,000/- out of which Rs.5,75,000/- have been kept in the bag in a Almirah at his residential house and an amount of Rs.25,0000/- had been kept concealed in the house of his sister in Ludhiana and a pistol had been kept concealed in a house of his sister in Saharanpur. Pursuant to this disclosure statement, Yashpal got recovered Rs.5,75,000/- and the black coloured bag bearing the words "M.M. Tayal" embroidered thereon from his house, which were taken into possession through recovery memo Ex.PC, which was attested by Madan Mohan and Ramesh Chand.

On the same day, Inspector Krishan Pal (PW-8) joined Sanjay Tayal in the investigation and after receipt of the secret information about Vinod, Vikas and Vidya Sagar, he went to the Truck Union, Panipat and apprehended all of them from a hut near a tube well. The inspector had recovered a sum of Rs.42,000/- from a bag which was being carried by Vikas. The notes were in the four packets of Rs.100/- denomination and four notes were of the denomination of Rs.500/-. The first and the last notes bore the initials of "MM". These were taken into possession through recovery memo Ex.PR, which was attested by the witnesses. A similar search of Vinod led to the recovery of Rs.41,000/-, which were carried by him in a bag. The notes were in four packets of Rs.100/- denomination and two packets

A of Rs.500 denomination. The first and the last currency notes of the packet of Rs.500/- denomination bore the initial "MM", the signatures of Madan Mohan (PW-1). The notes were taken into possession through recovery memo Ex.PS. A similar search conducted on the person of Vidya Sagar led to the recovery of B Rs.24,000/-. All the notes were of the denomination of Rs.500/- and 12 notes were recovered from the right pocket of Vidya Sagar while 36 notes were recovered from the back pocket of the pant of Vidya Sagar. All the notes bore the initials "MM", which were identified by Sanjay Tayal and taken into possession C through recovery memo Ex.PT. During the personal search of Vinod and Vikas one pistol of .12 bore alongwith two live cartridges were recovered from Vinod whereas from Vikas one pistol .315 bore along with three live cartridges were recovered.

D On the same day, Inspector Ravinder Kumar (PW-9) along with SI Yad Ram and other police officials had gone to Sona Arjunpur in search of the accused and there one Jaswant Rai was joined in the investigation. There the police party got secret information that Virender, Sohan and Vishav Pal were coming from Shamli to Panipat on a Yamaha motor cycle whereupon E he set up a naka. On their arrival, Sohan, Virender and Vishav Pal were apprehended and a sum of Rs.40,000/- were recovered from Vishav Pal, which were carried by him in a bag of black colour, which he was holding in his hand. A similar sum of F Rs.40,000/- was recovered from a bag which was being carried by Sohan. All the notes were of the denomination of Rs.100/- each and bore the initials "MM" of Madan Mohan complainant, who has been described as Madan Gopal-complainant. On the personal search of Virender, 86 currency notes of the denomination of Rs.500/- each i.e. Rs.43,000/- were recovered. G All the aforesaid currency notes were recovered through recovery memos Ex.PJ, PK and PL respectively. The motor cycle was also taken into possession through recovery memo Ex.PM.

H On 4.8.1996, Inspector Ravinder Kumar (PW-9) along with SI Randhir Singh and other police officials and the complainant went to Village Sona Arjunpur in search of Jagbir appellat

where he came to know that he had gone to Panipat in order to surrender in the Court. When the police party was present near the bridge of Yamuna, the Inspector received secret information that Jagbir had gone to Panipat. When the police party reached Sanjay Chowk, Panipat, the complainant pointed out towards Jagbir who was standing near a three wheeler. He was apprehended. On 7.8.1996, on interrogation Jagbir made a disclosure statement Ex.PD to the effect that he had kept concealed an amount of Rs.5,000/- in a wax paper in the Baithak of his house situated in Village Sona Arjunpur. Thereafter, in pursuance of his disclosure statement, he got recovered a sum of Rs.5,000/- of the denomination of Rs.100/- each. The same were taken into possession through recovery memo Ex.PE. One of the notes was bearing the initial of "MM".

5. On completion of the investigation, a challan was put in the Court of the Illaqa Magistrate, who committed the case to the Court of Sessions as the offences disclosed therein were exclusively triable by that Court.

6. On going through the challan papers, Learned Additional Sessions Judge framed charge under Section 364-A IPC against all the appellants to which they pleaded not guilty.

7. In order to bring home charge against the appellants, the prosecution examined Madan Mohan (PW-1), Amit Kumar (PW2), Pawan Kumar (PW3), Faqir Chand (PW4), SI Yad Ram (PW5), ASI Dalel Singh (PW6), Inspector Rajinder Singh (PW7), SI Krishan Pal (PW8) and Inspector Ravinder Kumar (PW9).

8. When examination under Section 313 of the Code of Criminal Procedure, 1973 (in short 'Cr.P.C.') in order to explain the incriminating circumstances appearing in evidence against them, Vikas, Vishav Pal, Pawan Kumar, Vidya Sagar, Sunder Pal, Vinod, Sohan and Jagbir pleaded innocence and false implication.

9. Placing reliance on the evidence of victim Amit Kumar (PW-2), Madan Mohan (PW-1) and Pawan Kumar (PW-3) as

A noted above the accused persons were found guilty and sentenced.

B 10. Before the High Court stand of the appellant was that offence under Section 364-A IPC has not been made out and in any event the seized money have not been produced during trial which prompted the High Court to take serious note of the lapse. But the High Court upheld the conviction and the sentence of the appellant.

C 11. It was pleaded that the prosecution version should not have been accepted. In any event, according to learned counsel for the appellant Section 364-A has no application.

D 12. In response, learned counsel for the respondent-State submitted that the High Court erroneously observed that the seized notes were not produced during trial. In any event the High Court was right in dismissing the appeal. It would be appropriate to deal with the plea that seized currency notes were not produced. Following observations of the trial Court are relevant:

E "... Similarly accused Pawan Kumar suffered a disclosure statement Ex.PG and got recovered an amount of Rs.45,000/- which was taken into possession vide memo Ex.PG/1. Ex.P4 is the currency notes. He also prepared the rough site-plans Ex.PP and Ex.PQ regarding the aforesaid recoveries. He further stated that on 20.6.1996 F he joined Sanjay Tayal in the investigation of this case and after receipt of a secret information, he rushed to Truck Union Panipat and there he apprehended accused Vinod, Vikas and Vidya Sagar. He conducted the personal search of the aforesaid accused and recovered an amount of G Rs.42,000/- from accused Vikas. The currency notes were in four packets of Rs.100/- denomination and four notes were of the denomination of Rs.500/-. The first and the last note of each packet were bearing the initial of "M.M." which also identified Sanjay Tayal of his brother Madan H Mohan. He took the same into possession and the bag is

Ex.P7 and currency notes are Ex.P4. The recovery memo is Ex.PR. He also conducted the personal search of Vinod and recovered an amount of Rs.41,000/- which were in a bag which is Ex.P8 which accused was carrying. The aforesaid currency notes were in four packets having a denomination of Rs.100/- and two notes were of the denomination of Rs.500/- The first and the last note of every bundle was having the initial of "M.M." and PW Sanjay Tayal identified the same. The currency notes were Ex.P4. He took into possession the bag Ex.PS which bears his signature as well as signature of Sanjay Tayal. He also conducted the personal search of Vidya Sagar accused and recovered a sum of Rs.24,000/-. All the currency notes were of the denomination of Rs.500/-. The 12 notes were recovered from the right pocket of the accused Vidya Sagar whereas 36 currency notes were recovered from back side pocket of the pant of the accused. All the currency notes were bearing the initial of Madan Mohan which were identified by Sanjay Tayal." A
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13. It is to be noted that before the High Court challenge was not raised to shake the credibility of the testimony of Madan Mohan (PW-1) and Amit Kumar (PW-2) during arguments. E

14. Section 364-A deals with 'Kidnapping for ransom etc.' This Section reads as follows:

"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 F
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(any foreign State or international inter-governmental organization 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 H

A fine.”

15. The Section refers to both “Kidnapping” and “Abduction”. Section 359 defines Kidnapping. As per the said provision there are two types of kidnapping i.e. (1) kidnapping from India; and (2) kidnapping from lawful guardianship.

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16. Abduction is defined in Section 362. The provision envisages two types of abduction i.e. (1) by force or by compulsion; and/or (2) inducement by deceitful means. The object of such compulsion or inducement must be the going of the victim from any place. The case at hand falls in the second category.

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17. To “Induce” means “to lead into”. Deceit according to its plain dictionary meaning signifies anything intended to mislead another. It is a matter of intention and even if promise held out by the accused was fulfilled by him, the question is: whether he was acting in a bonafide manner?

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18. The offence of abduction is a continuing offence. This Section was amended in 1992 by Act XLII of 1993 with effect from 22.5.1993 and it was subsequently amended in 1995 by Act XXIV of 1995 with effect from 26.5.1995. The Section provides punishment for kidnapping, abduction or detaining for ransom.

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19. To attract the provisions of Section 364-A what is required to be proved is (1) that the accused kidnapped or abducted the person; and (2) kept him under detention after such kidnapping and abduction; and (3) that the kidnapping or abduction was for ransom.

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20. To pay a ransom as per Black’s Law Dictionary means “to pay price or demand for ransom”. The word “demand” means “to claim as one’s due;” “to require”; “to ask relief”; “to summon”; “to call in Court”; “An imperative request preferred by one person to another requiring the latter to do or yield something or to abstain from some act;” “An asking with authority, claiming.” The

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definition as pointed out above would show that the demand has to be communicated. It is an imperative request or a claim made. A

21. When the evidence on record is analysed in the background of Section 364-A IPC, the inevitable conclusion is that the prosecution has clearly established commission of the said offence. Considering the alarming rise in kidnapping young children for ransom, the legislature has in its wisdom provided for stringent sentence. Therefore, the High Court rightly refused to interfere in the matter. In our view, the impugned judgment of the High Court does not suffer from any infirmity to warrant interference. The appeal fails and is dismissed. B C

N.J.

Appeal dismissed.