

Neeraj Sharma vs The State Of Chhattisgarh on 3 January, 2024

Author: Sudhanshu Dhulia

Bench: J.K. Maheshwari, Sudhanshu Dhulia

2024 INSC 6

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 1420 OF 2019

NEERAJ SHARMA

...APPELLANT(S)

Versus

STATE OF CHHATTISGARH

...RESPONDENT(S)

CRIMINAL APPEAL NO.36 OF 2024
(@ SPECIAL LEAVE PETITION (CRIMINAL) NO.5676 OF 2021)

ASHWANI KUMAR YADAV

...APPELLANT(S)

Versus

STATE OF CHHATTISGARH

...RESPONDENT(S)

JUDGMENT

SUDHANSHU DHULIA, J.

Leave granted.

2. Both these appeals arise out of a common judgment and Nidhi Ahuja Date: 2024.01.03 16:52:04 IST order dated 26.06.2018 passed by the High Court of Chhattisgarh Reason:

at Bilaspur in Criminal Appeal No.200 of 2015, which has dismissed the Criminal Appeal of the present appellants, upholding the conviction and sentence of the trial court. The two appellants were convicted for offences under Sections 307/120B, 364-A and 392/397 and were sentenced, inter alia, for life imprisonment under Section 364A Indian Penal Code, 1860 (for short 'IPC').

The third accused in this case, called Ravi Kumar Dwivedi, was acquitted by the trial court.

3. The case of the prosecution is that appellants had abducted one Arjit Sharma (PW-6), a Class 12th student of KPS School, Durg. The abduction, as per the prosecution, was for ransom, and a dastardly attempt was also made by the accused to kill the victim, although the victim miraculously escaped, but not before sustaining grievous injuries, which eventually led to the amputation of his right leg.

The complainant/victim (PW-6) was at the relevant time residing as a paying guest in the house of Smt. Seema Singh (PW-7) at Priyadarshni Nagar, Durg. The accused, Neeraj Sharma and complainant were known to each other and on 02.01.2013, the two decided to go on a motorcycle ride to Nehru Nagar and Yugandar College, Rajnandgaon. The complainant was picked from his guest house by the two accused i.e., Neeraj Sharma and Ashwani Kumar Yadav and the three took off on their motorcycle to a place called "Doundilohara". At about 1:00 am in the night when the complainant was trying to ease himself, the two accused made an attempt to kill him by throttling his neck by the clutch wire of the motorcycle. As a result, the complainant fell on the ground unconscious and the appellants thinking that the complainant had died, poured petrol on his body and set him on fire.

As per the prosecution case the body was set on fire, but before setting the body on fire, the complainant/victim's mobile phone and cash of Rs.5000/- (Rupees Five Thousand only) were looted from him, by the two accused Neeraj Sharma and Ashwani Kumar Yadav.

4. The complainant, however, was not dead, but as it turned out managed to escape from the scene and was later rescued by strangers whom he met on his way while escaping who helped him call an ambulance and he was taken to Doundilohara Hospital from where he was referred to Rajnandgaon and ultimately to Sector -9 Hospital, Bhilai. While he was at Doundilohara hospital, the doctor (PW-4) who had examined the complainant had also informed the Police and therefore a "Dehati Nalishi"¹ (Ex.P/12) was recorded on 03.01.2013. The doctor PW-4 (Jai Kumar Chunarkar) who had examined the complainant/victim at Doundilohara hospital, notes the following burn injuries in his report (Ex.P/09).

"Injured had worn underwear of dark chocolate colour, which was not burnt and smell of skin burning was emitting from his entire body and he was in semi-conscious condition. He was very restless and he had complaint of plain and burn on the burning spots." "Burn injuries were found on frontal and backside of both legs of the injured and skin of that spots had peeled out from surface. Burn injuries and many burning blisters on the lower portion of his belly and burn injury was on the waist and burn injury was on the upper portion of right side on the chest and a ligature mark like a lining was present on the frontal portion of neck of the injured, which was in light red colour, it had length of 122 to 14 cms and abrasion injuries were found on the frontal portion of his neck which had size of 3x2, 2x2 and 2x2 cms respectively. In this connection he had submitted his Report (exhibit P-9)." There were first degree burn injuries on the body of the victim as the burnt area was 45% to 48% of his body. Statement of the 1 Dehati Nalishi is something akin to a zero FIR. victim (PW-6) was recorded before a Nayab Tehsildar on 04.01.2013 at 12 noon. The overall circumstances

under which this statement was recorded makes it an important piece of evidence. We must also remember that this is a statement given by an eighteen year old boy who has just come out of a harrowing incident where a dastardly attempt was made on his life. He is also grievously injured and apparently had consulted no one before giving this statement before an Executive Magistrate. The veracity of this statement should not be in doubt. He states how he was taken on a motorcycle by Neeraj Sharma and Ashwani Kumar Yadav and how he was asked to consume alcohol on the way and then at 1:00 AM in the night, how the two accused first tried to strangle him with clutch wire and later set his body on fire, thinking he is dead. It is important here to note that there is no mention here of any demand or talk of ransom.

5. The police after completing its investigation filed its Chargesheet against the three accused under Sections 120B, 364A, 307, 392/397 and in the alternative section 394 of IPC. As it was a Sessions triable offence, it was committed to Sessions from where it went to First Additional Sessions Judge Balod, who ultimately framed charges on 15.04.2013 under Sections 364A, 307, 120B, 392, 397 and in the alternative 394 of IPC against all the accused persons i.e., Neeraj Sharma, Ashwani Kumar Yadav and Ravi Kumar Dwivedi.

The prosecution examined in all 11 witnesses and placed several exhibits before the Court. The accused pleaded not guilty and faced trial. The Trial Court passed its Judgement dated 03.01.2015 by which the accused appellants were convicted for offences under sections 307/120B, 364A and 392/397 IPC for which they were sentenced to life imprisonment inter alia for the major offence under section 364-A IPC which has also been upheld by the High Court.

6. While issuing notice in the Special Leave Petition on 30.11.2018 this Court in the case of Neeraj Sharma in fact issued a limited notice to his conviction under section 364-A while confirming his conviction under sections 307 read with 120B along with sections 392 read with 397 of IPC. The said order is produced below:

“We do not find any good ground warranting interference with the conviction of the petitioner under Section 307 IPC read with 120 (B) and Section 392 IPC read with 397.

Issue notice limited to the conviction under Section 364A returnable within eight weeks.” All the same nothing of this nature has been observed by this Court while issuing notice in the case of Ashwani Kumar Yadav which was issued on 02.08.2021.

As far as an attempt to murder and robbery are concerned, we have no doubt in our mind that the prosecution has been able to establish its case beyond a reasonable doubt. At the same time, we have our doubts about the conviction of the accused under 364- A of the IPC. In fact, this doubt was also in the mind of this Court, at least in the case of Neeraj Sharma, as this Court has issued a limited notice as only to the applicability of 364-A in the case.

7. The most important witness in this case is the complainant himself. He is also an injured witness. The injuries sustained by him in the incident match the case of the prosecution. An attempt was made by the two accused to dispose of the body of the victim by burning the body. There were burn injuries on both his legs.

The strong ligature mark on his neck was again significant as it is the case of the prosecution that the two accused had tried to strangle him with the clutch wire. The condition of the victim was precarious to say the least, and he gave a statement before the Executive Magistrate, B.K. Verma who was the Nayab Tehsildar and Executive Magistrate, Durg, he said:

“At 6.30-7.00 hrs in the evening Neeraj Sharma and Ashwini Yadav came to me and said that let's go to Youganthar College Rajnandgaon. I had not seen Youganthar College so I went along with them in motor cycle to see the college.” He also said, “In the night of 3rd at 1.30 hrs there is a plant towards Balod I do not know its name, near to that, Neeraj Sharma and Ashwini Yadav first strangled me with clutch wire I had stopped my breath they thought that me dead, then set me fire by pouring petrol.”

8. Apart from this, the veracity of the incident is further established by the deposition of Santosh Shukla (PW-1), who was the first person in the Bhilai Plant who saw the complainant in a burnt condition and who inquired from him as to what led to his injuries and was informed that these injuries were caused by his friends, and his money was also looted by them. PW-4, Dr. Jai Kumar Chunarkar, was the first to medically examine the complainant at Doundilohara Hospital. He had recorded burn injuries on his body which we have already referred above. Praneet Sharma (PW-5), is the father of the complainant who stated that on the midnight of 03.01.2013, he was informed by Aman Singh, that his son Arijit Sharma is not well and his son has been hospitalized at Sector -9 Hospital, Bhilai and when he reached the hospital, he saw his son in burnt condition and in severe pain. His son informed him that the two appellants were the ones who tried to kill him. He also said that at 12 noon on 03.01.2023 he received a phone call from the mobile number 7869590607, where the caller demanded a sum of Rs.8,00,000/- as ransom for the release of his son, Arijit Sharma. When he said that his son is in hospital with him and he would file a complaint against the caller, the phone got disconnected. This part of the statement of this witness (PW-5) who is the father of the complainant/injured, as regards the demand of ransom, however, has not been established in any manner.

The complainant himself was examined as PW-6 who said in his examination in chief that he was staying in Bhilai as paying guest and on 02.01.2013 the accused Neeraj Sharma who was known to him called on his mobile phone and asked him to come to Nehru Nagar, Bhilai, from where they were supposed to go somewhere on a motorbike. After informing his land lady, he went to meet Neeraj Sharma at Nehru Nagar. Neeraj Sharma arrived after a few minutes on a motorcycle with Ashwani Kumar Yadav riding their pillion. The three went on this motorcycle towards Yugandar College and on their way, they also consumed liquor. They had also met Rahul, the brother of Neeraj

Sharma, on their way. Past midnight, he requested Neeraj Sharma to stop the vehicle, as he wanted to ease himself and when the complainant was talking to Neeraj Sharma, the other accused Ashwani Kumar Yadav, came from behind and tied clutch wire around his neck and then both Ashwani Kumar Yadav and Neeraj Sharma made an attempt to strangle him with the clutch wire. As a result, he fell down semi-conscious and he was thought to be dead by the two assailants who then poured petrol on him. He also heard Neeraj Sharma and Ashwani Kumar fetching petrol from their motorcycle. Neeraj Sharma also took away Rs.5000/- from his purse, and his cell phone. Later petrol was poured on him and then he was set on fire. He somehow escaped and reached the nearby Bhilai plant and he informed the guard about the incident and gave the number of his landlord to him and subsequently ambulance was called and he was sent to the hospital. This witness was cross-examined at length by the defence counsel but nothing has come out which may cast a doubt on any of his statements.

9. PW-7 is the land lady Seema Singh, where the complainant was staying as a paying guest who also testified against the accused. She has said that the complainant had informed her that he is going with his friend towards another place on 02.01.2013 for which he sought her permission.

The mobile phone was traced by the police belonged to one of the accused Ashwani Kumar Yadav. The police during their investigation arrested Neeraj Sharma and Ashwani Kumar Yadav on 03.01.2013 and their Hero Honda Motorcycle and Mobile Phones were recovered.

The prosecution story therefore as far as abduction and attempt to murder is concerned can hardly be in doubt. The prosecution has been able to prove its case beyond a reasonable doubt. The most important witness here is the complainant himself, who is an 18-year-old boy, studying at the relevant time in a college near Bhilai, who trusted his friends, not aware that he is being taken by deceit by his friends who had planned his murder. PW-6 is also an injured witness.

10. The first doctor who had examined PW-6 was Dr. Jai Kumar Chunarkar (PW-4), who works at the District Hospital at Balod. He had examined the injured complainant in the early hours of morning on 03.01.2013. His observation as to the injuries of PW- 6 and his general condition are as follows :

“Opinion : - Burn injuries were found over the body of the patient, which were of dermal peed burn nature, which expressed the first degree burn. The area of burnt was approximately 45 to 48 percentage. Exhibit P- 9 is the examination report given by me, part A to A of which bears my signature.

On the same date, on receiving the memo from the Station House Officer Daundilohara for recording, statement of injured Arjit Sharma, I had opined that, “injured Arjit Sharma was not in the condition to give statement on 03.01.13 at 4:30 hours in the morning.” The injured was then referred to Bhilai Hospital where he was examined by Dr. Uday (PW-9). His observation is as follows :

“On examination, I found that both legs of the patient were deeply burnt from top to bottom and some blisters were therein stomach and both hands, which were burnt up to 40 to 45 percentage. There were mark in his neck, which probably was comes due to pressure of clutch wire. The treatment of which was undergone in my Hospital at about 60 days, in which he was operated twice, First operation was done on 15.01.13, during which we compelled to cut his right legs below the knee, which was rotten due to heavily burnt. Second operation was done on 12.02.13, wherein at the place on deep injury, the skin from other places were grafted. Therafter, it started improving gradually the condition of the patient and on 04.03.13, he has been discharged from the hospital. Registration Sheed (Bedhead Ticket) of indoor patient regarding admission in our hospital is Exhibit P-14, which is in 166 pages, wherein on each pages at part A to A bears my signature.” The other person who had met the injured while he had escaped was PW-1 i.e. Santosh Shukla. The statement of PW-1 is as follows:

“I am posted to the post of Senior Executive H.R. in Godawari Steel Plant Gidhali since January, 2009. It is the matter of first week of the January of this year, at that time I was on duty at night shift. On the night in between about 2 to 3, the Guard of the plant informed me that one boy in burning condition has come inside the plant and then reaching out from the office I saw that the boy was burnt at leg, back and hand etc., he had worn underwear only. On enquiring by me, the boy told that, “My friends carried me to the forest and burnt me and looted money from me”. Then I phoned to the Police-station of Daundilohara and had also phone to Sanjivani 108. Thereafter, Sanjivani Ambulance reached and had taken the boy to Daundilohara Hospital for treatment.

Police personnel Station House Officer Sahu had come to investigate the incident and had prepared Nazari map (Exhibit P-01) of the incident, part A to A of which bears my signature. Similarly, Halka Patwari had prepared the Nazari map (Exhibit P-02) of the incident, part A to A of which bears my signature. The police personnel had seized pants, which was burnt, burnt shirt and pants jeep in burnt condition, disposal glass, cigarette box etc. before me and two hand cuff persons. The said seizure proceeding of above articles was done according to Seizure memo (Exhibit P-3), from the place of the incident in the presence of accused Neeraj Sharma, present in the Court, wherein at part A to A, there was my signature. The Police personal had recorded my statement after enquiry.”

11. The importance of injured witness in a criminal trial cannot be over stated. Unless there are compelling circumstances or evidence placed by the defence to doubt such a witness, this has to be accepted as an extremely valuable evidence in a criminal Trial.

In the case of Balu Sudam Khalde v. State of Maharashtra 2023 SCC OnLine SC 355 this Court summed up the principles which are to be kept in mind when appreciating the evidence of an injured eye-witness. This court held as follows:

“26. When the evidence of an injured eye-witness is to be appreciated, the under-noted legal principles enunciated by the Courts are required to be kept in mind:

(a) The presence of an injured eye-

witness at the time and place of the occurrence cannot be doubted unless there are material contradictions in his deposition.

(b) Unless, it is otherwise established by the evidence, it must be believed that an injured witness would not allow the real culprits to escape and falsely implicate the accused.

(c) The evidence of injured witness has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly.

(d) The evidence of injured witness cannot be doubted on account of some embellishment in natural conduct or minor contradictions.

(e) If there be any exaggeration or immaterial embellishments in the evidence of an injured witness, then such contradiction, exaggeration or embellishment should be discarded from the evidence of injured, but not the whole evidence.

(f) The broad substratum of the prosecution version must be taken into consideration and discrepancies which normally creep due to loss of memory with passage of time should be discarded.”

12. In the case at hand the case of abduction and attempt to murder are well established by the prosecution. All that is now left for us to determine is whether an offence under Section 364A of IPC is made out?

While abduction simpliciter may not technically be an offence under the IPC, it becomes a punishable offence when it is combined with another act. For example, abduction in order to commit murder is an offence under Section 364 IPC. So is abduction an offence if it is done with an intent to secretly or wrongfully confine a person (Section 365, IPC), or when it is done to compel a woman for marriage etc. (Section 366, IPC). Similarly, Section 364A is an offence where kidnapping or abduction is made and a person is put to death or hurt; or a person is threatened with death or actually murdered, on demand of ransom.

Section 364A IPC was inserted in the Indian Penal Code by an Act of Parliament (Act No.42 of 1993 with effect from 22nd May, 1993). That was a period when kidnapping and abduction for the purposes of ransom were on the rise and therefore, the Law Commission of India in its 42nd Report in 1971 had recommended insertion of Section 364A in IPC, though it was ultimately incorporated in the year 1993, it 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.” This Court in the case of *Vikram Singh v. Union of India* (2015) 9 SCC 502 has observed as follows:

“53. Applying the above to the case at hand, we find that the need to bring in Section 364-A IPC arose initially because of the increasing incidence of kidnapping and abduction for ransom.

This is evident from the recommendations made by the Law Commission to which we have made reference in the earlier part of this judgment. While those recommendations were pending with the Government, the spectre of terrorism started raising its head threatening not only the security and safety of the citizens but the very sovereignty and integrity of the country, calling for adequate measures to curb what has the potential of destabilising any country. With terrorism assuming international dimensions, the need to further amend the law arose, resulting in the amendment to Section 364-A IPC, in the year 1994. The gradual growth of the challenges posed by kidnapping and abductions for ransom, not only by ordinary criminals for monetary gain or as an organised activity for economic gains but by terrorist organisations is what necessitated the incorporation of Section 364-A IPC and a stringent punishment for those indulging in such activities.” It needs to be clarified, as it was done in *Vikram Singh* (supra), that Section 364A IPC does not merely cover acts of terrorism against the Government or Foreign State but it also covers cases where the demand of ransom is made not as a part of a terrorist act but for monetary gains for a private individual.

13. In the present case, the evidence placed by the prosecution to establish a case under Section 364-A is in the form of a phone call to the father of the victim at 12 noon by Ravi Kumar Dwivedi (the third accused who was acquitted by the Trial Court). Although, according to the prosecution the number has been traced to Ashwani Kumar Yadav, one of the two accused here, but no evidence to this effect, as required under Section 165 of the Evidence Act, has been placed before the Court. The supplementary statement given by the complainant before the police on 21.03.2013, (his first statement is on 03.01.2013), has little relevance as PW-6 never speaks of this in his examination in chief.

14. This court in the case of *Shaik Ahmed v. State of Telangana* (2021) 9 SCC 59 has held that in order to make out an offence under Section 364 A, three conditions must be met:

A) There should be a kidnapping or abduction of a person or a person is to be kept in detention after such kidnapping or abduction;

B) There is a threat to cause death or hurt to such a person or the accused by their conduct give rise to a reasonable apprehension that such person may be put to death or hurt C) Or cause death or hurt to such a person in order to compel the Government or any foreign state or intergovernmental organisation or any other person to do or abstain from doing any act or to pay a ransom.

The necessary ingredients which the prosecution must prove, beyond a reasonable doubt, before the Court are not only an act of kidnapping or abduction but thereafter the demand of ransom, coupled with the threat to life of a person who has been kidnapped or abducted, must be there. It was reiterated by this Court in the case of Ravi Dhingra v. State of Haryana (2023) 6 SCC 76. In the present case, what the prosecution has miserably failed to establish is the demand of ransom. As per the prosecution, the complainant's father i.e., Praneet Sharma (PW-5) received a phone call from which a demand of ransom was made. The phone call was allegedly traced as being of one Ravi Kumar Dwivedi but no evidence was placed on record to establish the demand of ransom before the Court which was absolutely necessary in view of the law laid down by this Court in Rajesh v. State of Madhya Pradesh, 2023 SCC OnLine SC 1202.

15. For making out a case under Section 364-A, the first condition i.e., kidnapping or abduction must be coupled with either the second or the third condition as held by this Court in Shaik Ahmed (supra)². Under the said provision, the accused is liable to be punished either by death or imprisonment for life and is also liable to be fined considering the gravity of the offence. In the present case, even if it is presumed for the sake of argument that an offence under Section 364 is made out, we do not find that the offence would come under the ambit of Section 364A.

'Abduction' is defined under Section 362 which reads as under:

"362. Abduction.—Whoever by force compels, or by any deceitful means 2 Para 33 induces, any person to go from any place, is said to abduct that person." The offence which is made out is definitely under Section 364 which reads as under:

"364. Kidnapping or abducting in order to murder.—Whoever kidnaps or abducts any person in order that such person may be murdered or may be so disposed of as to be put in danger of being murdered, shall be punished with [imprisonment for life] or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine."

16. However, in order to come under the ambit of Section 364A, something more than abduction is required, which is demand of ransom. We do not find that there was a demand of ransom as alleged by the prosecution. There is no worthwhile evidence placed by the prosecution in this regard.

The demand of ransom does not come in the examination in chief of the complainant (PW-6). He sticks to his theory of abduction, attempt to murder, etc., but there is no whisper about any demand of ransom, though in his supplementary statement before the Police (under Section 161 of Criminal Procedure Code), on 21.03.2013, he says that while he was lying on the ground after an attempt to strangle him was made by the two accused, he had heard Neeraj Sharma telling Ashwani Kumar Yadav that they should now demand a ransom from his father. The only deposition in Court regarding demand of ransom has come as a bald statement by Praneet Sharma (PW-5) who is the father of the complainant that on 03.01.2013 when he was in the hospital one Ravi Kumar Dwivedi demanded Rs.8,00,000/- as ransom. Ravi Kumar Dwivedi the third accused, has already been acquitted by the Trial Court. There was no evidence at all before the Trial Court to have convicted the appellants under Section 364A, IPC. The conviction of the appellants under Section 364A is not made out and is therefore liable to be set aside.

17. Appellants' conviction and sentence of life imprisonment under Section 364A of IPC is therefore set aside. All the same, we do find that PW-6 was abducted so that he could be murdered. We therefore convert the findings under Section 364A to that of Section 364. Appellants are hereby convicted under Section 364 of IPC, instead of Section 364A IPC.

Both the trial court and the High Court have failed to detect the flaw in the evidence led by the prosecution under Section 364A IPC. The trial court as well as the appellate court have completely relied upon the evidence of PW-5 (Praneet Sharma, father of the victim) and PW-6 his son, the victim. As far as the evidence of PW-6 is concerned, he makes no mention of any demand or ransom in the court as a prosecution witness. In his first statement given to the Executive Magistrate on 03.01.2013, again he makes no mention of any ransom. He only mentions about ransom in his supplementary statement recorded by the Police after two months on 21.03.2013. The High Court believes it and calls it a "dying declaration". The statement given to the Police on 21.03.2023 cannot be called a dying declaration. Dying declaration is defined under Section 32 of Indian Evidence Act, 1872 which is reproduced below:

32. Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant.—Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which under the circumstances of the case appears to the Court unreasonable, are themselves relevant facts in the following cases:— (1) When it relates to cause of death.— When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question.

Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.

(2) Or is made in course of business.— When the statement was made by such person in the ordinary course of business, and in particular when it consists of any entry or memorandum made by him in books kept in the ordinary course of business, or in the discharge of professional duty; or of an acknowledgment written or signed by him of the receipt of money, goods, securities or property of any kind; or of a document used in commerce written or signed by him; or of the date of a letter or other document usually dated, written or signed by him.

(3) Or against interest of maker.—When the statement is against the pecuniary or proprietary interest of the person making it, or when, if true, it would expose him or would have exposed him to a criminal prosecution or to a suit for damages.

(4) Or gives opinion as to public right or custom, or matters of general interest.— When the statement gives the opinion of any such person, as to the existence of any public right or custom or matter of public or general interest, of the existence of which, if it existed, he would have been likely to be aware, and when such statement was made before any controversy as to such right, custom or matter had arisen.

(5) Or relates to existence of relationship.—When the statement relates to the existence of any relationship [by blood, marriage or adoption] between persons as to whose relationship [by blood, marriage or adoption] the person making the statement had special means of knowledge, and when the statement was made before the question in dispute was raised.

(6) Or is made in will or deed relating to family affairs.—When the statement relates to the existence of any relationship [by blood, marriage or adoption] between persons deceased, and is made in any will or deed relating to the affairs of the family to which any such deceased person belonged, or in any family pedigree, or upon any tombstone, family portrait or other thing on which such statements are usually made, and when such statement was made before the question in dispute was raised.

(7) Or in document relating to transaction mentioned in Section 13, clause (a).—When the statement is contained in any deed, will or other document which relates to any such transaction as is mentioned in Section 13, clause (a).

(8) Or is made by several persons and expresses feelings relevant to matter in question.—When the statement was made by a number of persons, and expressed feelings or impressions on their part relevant to the matter in question.

The statement given by the complainant/victim (PW-6) on 03.01.2013 was firstly to the investigating officer (PW-10). But more importantly it cannot be called “a dying declaration” simply because PW-6 had mercifully survived. This statement cannot be read as a dying declaration because the person making this statement or declaration had ultimately survived. This supplementary statement given to the investigating officer on 21.03.2013 is nothing more than a statement under Section 162 of Criminal Procedure Code (see: *Gentela Vijayavardhan Rao and Another v. State of A.P.* (1996) 6 SCC 2413; *Sunil Kumar and Others v. State of M.P.* (1997) 10 SCC

5704; Shrawan Bhadaji Bhirad and Others v. State of Maharashtra (2002) 10 SCC 565; State of U.P. v. Veer Singh and Others (2004) 10 SCC 1176 and S. Arul Raja v. State of Tamil Nadu (2010) 8 SCC 2337.

18. In our considered opinion both the Trial Court as well as the High Court were completely misdirected in holding this to be, inter alia, a case under Section 364A of the IPC. There was no 3 Para 13 4 Para 20 5 Para 8 6 Para 5 7 Para 31 worthwhile evidence placed by the prosecution on this aspect. The findings of the Courts on this aspect therefore needs to be set aside. We, therefore, partly allow the present appeals to the extent that findings recorded by the Trial Court and the High Court of conviction under Section 364A of the IPC are hereby set aside. We, however, find that the accused had committed an offence under Section 364 IPC, as the offence of abduction in order to murder the victim i.e., PW-6 stands proved. In other words, we convert the findings of conviction under Section 364A to that of Section 364 IPC and sentence the two accused (present appellants) for rigorous imprisonment of Ten years each on this count and a fine of Rs.10,000/- each, and in default further imprisonment of three months. The rest of the conviction and sentence that is under Section 307 of the IPC read with Section 120B as well as under

Section 392 of IPC read with Section 397 are hereby affirmed. We are also aware that in addition to the sentence, a fine of Rs.50,000/- each against the two accused was imposed by the High Court. We retain the same and direct that the fine be recovered from the present appellants, in default of payment of the fine, the appellants shall undergo further imprisonment of one year each. The above fine shall be thereafter remitted to the victim in accordance with law.

19. A victim of a crime cannot be treated merely as a prosecution witness. Section 357(1) of Criminal Procedure Code empowers the court to order that the fine amount recovered be given to any person as compensation who has suffered any loss or injury caused due to that offence. In this case, the victim had suffered burn injuries of 45-48% and lost one leg, when he was only eighteen years of age. There may be times when the situation may demand that a substantive amount of compensation be paid to the victim and the convict may not be financially that strong to bear that burden. For such situations, Section 357A was therefore introduced in Criminal Procedure Code for this reason, where compensation to the victims may be paid out of State funds, as the State had the responsibility to protect the victim against the offence that had been committed against the victim of the crime.

20. In the present case, the victim i.e., PW-6 has suffered grievous injuries, not only this, his left leg below his knee had to be amputated. Consequently, we direct that an amount of Rs.5,00,000/- (Five Lakhs only) be paid by the State of Chhattisgarh to the victim as compensation under Section 357A of Cr.PC., instead of Rs.1,00,000/- as directed by the High Court.

Let the same be done within a period of three months from today.

21. Ashwani Kumar Yadav shall be released, subject to the payment of fine/compensation, provided he has completed his 10 years of imprisonment and if not required in any other case. Order dated 17.09.2019 of this Court up to the extent of suspending the sentence of appellant Neeraj Sharma and granting him bail is hereby vacated. The bail bonds of appellant Neeraj Sharma stand cancelled and he is directed to surrender within two weeks from today to complete his remaining sentence.

A copy of this judgment shall also be sent to the victim.

.....J. [SUDHANSHU DHULIA]J. [SATISH
CHANDRA SHARMA] New Delhi.

January 3, 2024.