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RAVI DHINGRA

v.

THE STATE OF HARYANA

(Criminal Appeal No. 987 of 2009)

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MARCH 01, 2023

**[SANJAY KISHAN KAUL AND B. V. NAGARATHNA, JJ.]**

- Penal Code, 1860 – ss.364A, 363 and 364 – Modification of conviction u/s.364A to s.363 – Appellants convicted u/ss.148, 364A r/w s.149, IPC – Sentenced to undergo rigorous imprisonment for 3 years u/s.148, rigorous imprisonment for life and fine u/s.364A r/w s.149 – On appeal, held: s.364A has three components- kidnapping or abduction of a person and keeping them in detention; threat to cause death or hurt, and the use of kidnapping, abduction, or detention with a demand to pay the ransom; and when the demand is not met, then causing death – In the present case, there are two statements of PW-21-child victim, one made to the police 2 days after he had returned home from the captivity of appellants and another made before the Trial Court, two years after the initial statement – Three changes are noticed therein, first, a change in the exact timing of the threat; second, the specificity of the delivery of the threat to kill; and third, omission of the intent behind the threat i.e. to prevent PW-21 from crying out – These details are crucial to proving the second ingredient of the charge u/s.364A i.e, ‘threat resulting in giving rise to a reasonable apprehension that such person may be put to death or hurt’ – Thus, this ingredient was not proved beyond reasonable doubt – For proving the ingredient of threat, the intimidation of the child victim, for the purpose of making him silent cannot be enough – If the sentence carrying a maximum sentence of death and a minimum sentence of life sentence has such a low evidentiary threshold, the difference between punishments for kidnapping u/ss.363, 364 and 364A shall become meaningless – Conviction of the appellants u/s.364A is unsustainable – Appellants convicted u/s.363 and sentenced to imprisonment for seven years with fine – Code of Criminal Procedure, 1973 – s.216.*

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**Partly allowing the appeals, the Court**

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**HELD:** 1.1 Section 363 of the IPC punishes the act of kidnapping and Section 364 thereof punishes the offence of kidnapping or abduction of a person in order to murder him. Section 364A further adds to the gravity of the offence by involving an instance of coercive violence or substantial threat thereof, to make a demand for ransom. Accordingly, the maximum punishment for the three crimes is seven years imprisonment; ten years' imprisonment and imprisonment for life or death, respectively. Under section 364A, it is necessary to prove not only that such kidnapping or abduction has taken place but that thereafter, the accused threatened to cause death or hurt to such person or by his conduct gave rise to a reasonable apprehension that such person may be put to death or hurt or cause hurt or death to such person in order to compel the Government or 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. [Paras 12 and 13][173-F-G; 176-E-F]

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*Lohit Kaushal v. State of Haryana (2009) 17 SCC 106;*  
*Anil v. Administration of Daman & Diu (2006) 13 SCC*  
*36 : [2006] 9 Suppl. SCR 466; Vishwanath Gupta v.*  
*State of Uttarakhand (2007) 11 SCC 633 : [2007] 4*  
*SCR 332; Vikram Singh v. Union of India (2015) 9 SCC*  
*502 : [2015] 10 SCR 816 – relied on.*

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1.2 The Courts below, as is usual in kidnapping cases, have placed singular reliance on the testimony of PW-21 to prove the element of ‘threat to cause death or hurt’, or to determine whether the appellants’ conduct gives rise to a reasonable apprehension that such person may be put to death or hurt. The statement of PW-21 made to the police on 18.02.2000, i.e., two days after he had returned home from the captivity of appellants herein records that he was threatened at night by the appellants with a ‘revolver,’ which was claimed to be possessed by them. The exact statement was, “*One handkerchief and one black cloth were tied on the eyes and said to me they have revolver and they will kill him if [he] raises any voice.*” However, the statement before the Trial Court dated 15.04.2002, nearly two years after the initial statement, includes a substantial detail that was omitted in the previous

- A statement. After mentioning that the PW-21 was forcibly put inside the car and gagged, the statement reads, "*The occupants threatened me with a knife and pistol and threatened me to kill.*" Thus, three crucial changes may be noticed: first, a change in the exact timing of the threat; second, the specificity of the delivery of the threat to kill; and third, omission of the intent behind the threat i.e. to prevent PW-21 from crying out. These details are crucial to proving the second ingredient of the charge under Section 364A and essential to bring home the guilt under this section namely, threat resulting in giving rise to a reasonable apprehension that such person may be put to death or hurt. It is clear that this ingredient has not been proved beyond reasonable doubt. The Courts below did not thoroughly address this doubt before convicting the appellants. For proving the ingredient of threat, the intimidation of the child victim, for the purpose of making him silent, cannot be enough. If the sentence carrying a maximum sentence of death and a minimum sentence of life sentence has such a low evidentiary threshold, the difference between punishments for kidnapping under 363, 364 and 364A shall become meaningless. [Para 15][179-F-H; 180-A-D]
- 2. This Court has wide power to alter the charge under Section 216 of the Cr.PC whilst not causing prejudice to the accused. In the facts of the present case, the conviction of the appellants is unsustainable under Section 364A of the IPC. The conviction under Section 364A of the IPC is set aside. The judgments of the Trial Court and the High Court are modified to the above extent. The appellants are now convicted for the offence under Section 363 of the IPC; i.e., kidnapping and sentenced to imprisonment for seven years and a fine of Rs.2000/-.. [Paras 17 and 18][180-H; 181-A, G-H; 182-A]
- G *Sk. Ahmed v. State of Telangana (2021) 9 SCC 59;*  
*Jasvinder Saini v. State (Govt. of NCT of Delhi) (2013) 7 SCC 256 : [2013] 7 SCR 340;* *Central Bureau of Investigation v. Karimullah Osan Khan (2014) 11 SCC 538 : [2014] 3 SCR 588;* *Dr. Nallapareddy Sridhar Reddy v. State of Andhra Pradesh (2020) 12 SCC 467 : [2020] 1 SCR 1116 – relied on.*

*Malleshi v. State of Karnataka (2004) 8 SCC 95 : [2004] 4 Suppl. SCR 441 – referred to.* A

<u>Case Law Reference</u>		
[2006] 9 Suppl. SCR 466	relied on	Para 13
[2007] 4 SCR 332	relied on	Para 13 B
[2015] 10 SCR 816	relied on	Para 13
[2004] 4 Suppl. SCR 441	referred to	Para 16
[2013] 7 SCR 340	relied on	Para 18
[2014] 3 SCR 588	relied on	Para 18 C
[2020] 1 SCR 1116	relied on	Para 18

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 987 of 2009.

From the Judgment and Order dated 13.02.2008 of the High Court of Punjab & Haryana at Chandigarh in CRLA No. 525 of 2003. D

With

Criminal Appeal Nos. 989-990, 986, 988 of 2009 and 645 of 2023.

Gaurav Agrawal, (SCLSC), Saurav Sunil, Santosh Krishnan, Simon Benjamin, Ms. Deepshikha Sansanwal, Krishnam Mishra, Rajeev Kumar Dubey, Kamlendra Mishra, Advs. for the Appellant. E

Rakesh Mudgal, A.A.G., Dr. Monika Gusain, Dinesh Mudgal, Rakesh Kumar Yadav, Ms. Savita Kaushik, Advs. for the Repondent.

The Judgment of the Court was delivered by

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**NAGARATHNA, J.**

Leave granted in Criminal Appeal @ SLP (Crl.) No.5296 of 2012. In all other cases, leave has already been granted.

2. The present appeals have been filed by five accused whose convictions were confirmed by the impugned judgement of the Punjab and Haryana High Court dated 13.02.2008, under Sections 148, 149 and 364A of the Indian Penal Code, 1860 ('IPC', for short).The details of the cases are as under: G

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	<b>Criminal Appeals/ SLP No.</b>	<b>Name of the accused persons</b>	<b>Period of custody undergone with remission</b>
A	Criminal Appeal No. 987 of 2009	Raman Goswami (Deceased, Accused No.3)	6 years, 8 months& 10 days as per jail custody certificate dated 31.01.2023 (Since deceased) appeal abates.
B	Criminal Appeal No. 987 of 2009	Ravi Dhingra (Accused No.4)	7 years, 10 months& 13 days(on bail since 13.05.2009 as per jail custody certificate dated 31.01.2023)
C	Criminal Appeal Nos. 986 of 2009 and 988 of 2009	Laxmi Narain (Accused No.5)	Custody certificate not produced
D	Criminal Appeal No. 989-990/2009	Baljit Pahwa (Accused No.2)	7 years, 8 months& 2 days(on bail since 13.05.2009as per jail custody certificate dated 31.01.2023)
	SLP (Crl.) No. 5296 of 2012	Parvez Khan (Accused No.1)	3 years, 7 months &2 days(on bail since 28.07.2012 as per jail custody certificate dated 31.01.2023)

Criminal Appeal No.987 of 2009, filed by Raman Goswamistands abated on account of his death *vide* order dated 08.04.2019. Accordingly,

E Criminal Appeal No.987 of 2009, is considered in respect of Ravi Dhingraalone. All these matters were heard together and they are being disposed of by this common judgment.

3. Facts in brief, as per FIR No.64 dated 15.02.2000 at Police Station, City Thanesarlodged at the instance of complainant, Dr. H.K. F Sobti (PW-20) are that the appellants accused kidnapped Harsh (PW-21), aged 14 years, son of Dr H.K. Sobti and Smt Indra Sobti (PW-5) when he was going to school, at about 8:15 a.m. on the aforesaid date. The Station House Officer had filed the FIR with a remark that a case under Section 364/34 of the IPC seems to be made out from the facts.

G As per the statement of PW-21, he was intimidated by co-accused Ravi Dhingra to ride as a pillion rider on his scooter and upon his refusal, he was forcibly put inside a car. Upon screaming for safety, he was threatened to be killed with a knife and pistol if he cried. They also told him that his affluent father could even pay the ransom of Rs.50 lakhs.

H It emerged in the investigation that PW-21 was kept in House No.772, Sector-13, Kurukshetra. Smt.Kanta Goyal (PW-2) who was a

resident of house No. 1653/13 which was near the said school and another student of 9<sup>th</sup> Standard, namely, Manish (PW-4) told them that at 8:15 a.m., two boys with muffled faces had put Harsh in a Maruti car without a number plate and having tinted window glass. Later, on the same day, calls demanding ransom were received, acting on which, PW-20 reached the concerned location with the ransom demanded. While he was waiting for the appellants accused to receive the ransom and release his child, PW-21 Harsh Sobi was released between 04:00 a.m. and 04:30 a.m. on 16.2.2000 and dropped near the house of PW-11 Suraj Bhan Rathee. He made a phone call to his mother, who took him to his house at around 5:30 a.m.

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4. That demands and enquiries for ransom were made through letters and telephonic messages to PW-20 on 09.03.2000, 12.03.2000, 13.03.2000 and 14.03.2000. Another message regarding ransom was received *via* telephone on 15.03.2000 at 2:30 p.m. He informed the appellants that while he could not arrange Rs. 15 lakhs, he had arranged Rs. 12 lakhs. Acting on the instructions received in these messages, PW-20, after intimating the police, boarded the train at 8:15 p.m. with a bag of money. When the train stopped at Ambala, he got down. He went back to Kurukshetra wherefrom he was asked to leave his house with the bag of money and come to Karnal. PW-20 went in his car with two sub-inspectors in civil dress. Upon the delivery of the cash in a bag near a bridge, it was discovered that calls were made from a mobile phone registered in the name of an engineering student, Ravi Duhan (PW-19). He revealed that his friends, appellants herein, had borrowed his phone. On 17.03.2000, upon receiving secret information about the whereabouts of four accused persons, namely, Ravi Dhingra, Baljit Pahwa, Parvej Khan and Raman Goswami, were apprehended by the police except accused Laxmi Narain who was apprehended on 03.04.2000. The Chief Judicial Magistrate, Kurukshetra, committed the case to the Court of Sessions for trial on 06.06.2000.

5. Additional Sessions Judge, Fast Track Court, Kurukshetra, ('Trial Court', for the sake of convenience) tried the appellants accused for the commission of offences under Sections 364, 364A, 342, 506 read with Section 148 of the IPC. The prosecution presented 27 witnesses and 72 documentary Exhibits, including statements of the appellants under Section 164 of the Code of Criminal Procedure, 1973 (hereinafter 'Cr.PC', for short) and 5 case properties. From the appellants' side, 13 documentary

- A exhibits were presented. The Trial Court recorded the appellants' - accused's statements under Section 313 of the Cr. PC.
  - 6. Appellants maintained that they were falsely implicated and had been kept in illegal confinement after being apprehended. They also argued that they were produced before the Court after their pictures
- B had been widely publicised through local media and confronted with prosecution witnesses. Further, it was submitted that they were tortured before being presented before the court on 18.03.2000. They also stated that they were forced to sign statements prepared by Investigating Officer on 20.03.2000.
- C 7. The Trial Court considered the aforementioned statements and the other evidence on record and held that appellants formed an unlawful assembly and in pursuance of a common object, kidnapped PW-21 to compel his father to pay a ransom amount of Rs.15 Lakhs. The Trial Court also concluded that the appellants sought to take advantage of PW-21's confinement and the threat to cause death to him for compelling PW-20 to pay the ransom.

The Trial Court found no reason to disbelieve the statement of the PW-21.

- E Thus, appellants were held guilty for the commission of offences punishable under Sections 148 and 364A read with Section 149 of the IPC. Appellants prayed for leniency in the sentence on the ground that they had old parents and there was no one else to look after them. The Trial Court concluded the trial and rendered its verdict on 29.05.2003. The Trial Court sentenced the accused-appellants to undergo rigorous imprisonment for three years under Section 148 of the IPC, rigorous
- F imprisonment for life and to pay a fine of Rs.2000/- each under Section 364A read with Section 149 of the IPC. The Trial Court further clarified that the period of under-trial detention would be set off and both sentences shall run concurrently.

- G 8. Appellants appealed against the order of conviction and sentence before the Punjab and Haryana High Court. The High Court considered the question as to whether there existed reliable evidence to identify and connect the appellants with the offence of kidnapping for ransom under Section 364A of the IPC. The High Court termed PW-21's statement to be crucial, and placing reliance on the same, held that all ingredients of Section 364A of the IPC had been satisfied.
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The High Court rejected the plea that there was material discrepancy in the prosecution's case and held that there was no reason to cast any doubt on the veracity of the versions of prosecution witnesses. Regarding PW-21, the High Court remarked that he was "*a child witness, but he faced long and searching cross-examination*" and there is no contradiction in his version. It rejected the contention as to the contradictions in PW-20's stance by declaring that "*Discrepancy in investigation cannot by itself a ground to reject the testimony of a reliable witness.*" Further, the High Court concluded that by virtue of the testimony of PW-20 and PW-21 itself, the "*connection of the accused with the crime stands established beyond reasonable doubt.*"

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9. The High Court rejected the plea of the appellants to modify the conviction to that for an offence under Section 363 or 365 of the IPC or under Section 506 IPC, which did not provide for a minimum sentence of life imprisonment on the ground of prolonged detention of over seven years.

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Being aggrieved by the judgement and sentence of the High Court, the accused have approached this Court by filing their respective Special Leave Petitions, in which leave has been granted and are now considered Criminal Appeals.

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On 11.05.2009, this Court noted that the appellants had served seven years in prison and could be granted bail on the satisfaction of the Trial Court of necessary conditions. It also granted leave to appeal in the Special Leave Petitions and admitted the matters.

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10. Appellants-accused before this Court have submitted that there is grave doubt about the fact that the appellants herein are the very persons who had kidnapped Harsh Sobi, PW-21, but the Courts below have found reasons to believe the evidence of PW-21. Thus, without conceding the arguments made for acquittal by raising questions about the investigation, appellants have urged that judicial notice may be taken of the long period of their incarceration and their conviction under Section 364A of the IPC be modified to a conviction under Section 363 of the IPC.

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Sri Gaurav Agrawal, learned counsel appearing on behalf of the appellants appointed by Supreme Court Legal Services Committee, placed reliance on ***Sk. Ahmed vs. State of Telangana, (2021) 9 SCC 59***

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- A (***“SK Ahmed”***), to contend that the essential ingredients of Section 364A of the IPC have not been proved in this case. The crux of his argument was that the Sessions’ Court as well as the High Court have disregarded the fact that PW-21’s statement before the Court on 15.04.2002 was a substantial improvement upon the statement made to the police on 15.02.2000. Therefore, he submitted that no threat to cause death or hurt has been proven. He also submitted that no demand for ransom on the basis of the cause of death or hurt could be proven as these emanated from the police. He submitted that PW-12 turned hostile and PW-13 was only a chance witness. Hence, the judgments impugned may be interfered with and the appellants may be granted relief by modifying C the sentences imposed on them even if acquittal of the appellants may not be possible.

On the other hand, Sri Rakesh Mudgal, learned AAG for the respondent-State supported the judgment of the High Court and contended that there is no merit in these appeals and the same may be D dismissed. He submitted that the High Court was justified in its reasoning and in dismissing the appeals filed by the appellants herein.

- 11. In view of the facts on record and the rival submissions of the parties, we deem it appropriate to limit the point for consideration in this appeal to whether the facts, in this case, attract the offence under Section E 364A of the IPC and if the answer is in the negative, would it be just and proper to modify the conviction to a sentence under Section 363 of the IPC.

To put the matter in perspective, the provisions of Section 361 read with Sections 363, 364 and 364A ought to be compared. The said F provisions read as under:

- G **Section 361:Kidnapping from lawful guardianship.** Whoever takes or entices any minor under sixteen years of age if a male, or under eighteen years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship.

**Explanation.—**The words “lawful guardian” in this section include any person lawfully entrusted with the care or custody of such minor or other person.

Exception.—This section does not extend to the act of any person who in good faith believes himself to be the father of an illegitimate child, or who in good faith believes himself to be entitled to the lawful custody of such child, unless such act is committed for an immoral or unlawful purpose.

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**Section 363: Punishment for kidnapping.** Whoever kidnaps any person from India or from lawful guardianship, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

**Section 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.

**Section 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 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 fine.”

12. We note that Section 363 of the IPC punishes the act of kidnapping and Section 364 thereof punishes the offence of kidnapping or abduction of a person in order to murder him. Section 364A further adds to the gravity of the offence by involving an instance of coercive violence or substantial threat thereof, to make a demand for ransom. Accordingly, the maximum punishment for the three crimes is seven years imprisonment; ten years' imprisonment and imprisonment for life or death, respectively.

The nuanced, graded approach of the Parliament while criminalising the condemnable act of kidnapping must be carefully

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- A interpreted. Before interpreting the varying ingredients of crime and rigours of punishment, and appraising the judgments impugned, we deem it appropriate to reiterate the observations of this Court in *Lohit Kaushal vs. State of Haryana, (2009) 17 SCC 106*, wherein this Court observed as under:
- B “**15.** ... It is true that kidnapping as understood under Section 364-A IPC is a truly reprehensible crime and when a helpless child is kidnapped for ransom and that too by close relatives, the incident becomes all the more unacceptable. The very gravity of the crime and the abhorrence which it creates in the mind of the court are, however, factors which also tend to militate against the fair trial of an accused in such cases. A court must, therefore, guard against the possibility of being influenced in its judgments by sentiment rather than by objectivity and judicial considerations while evaluating the evidence.”
- C 13. This Court, notably in *Anil vs. Administration of Daman & Diu, (2006) 13 SCC 36 (“Anil”), Vishwanath Gupta vs. State of Uttarakhand (2007) 11 SCC 633 (“Vishwanath Gupta”) and Vikram Singh vs. Union of India, (2015) 9 SCC 502 (“Vikram Singh”)* has clarified the essential ingredients to order a conviction for the commission of an offence under Section 364A of the IPC in the following manner:
- D E a) In *Anil*, the pertinent observations were made as regards those cases where the accused is convicted for the offence in respect of which no charge is framed. In the said case, the question was whether appellant therein could have been convicted under Section 364A of the IPC when the charge framed was under Section 364 read with Section 34 of the IPC. The relevant passages which can be culled out from the said judgment of the Supreme Court are as under:
- E “**54.** The propositions of law which can be culled out from the aforementioned judgments are:
- F G (i) The appellant should not suffer any prejudice by reason of misjoinder of charges.
- G (ii) A conviction for lesser offence is permissible.
- G (iii) It should not result in failure of justice.
- G (iv) If there is a substantial compliance, misjoinder of charges
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may not be fatal and such misjoinder must be arising out of mere A  
misjoinder to frame charges.

**55.** The ingredients for commission of offence under Section 364 and 364-A are different. Whereas the intention to kidnap in order that he may be murdered or may be so disposed of as to be put in danger as murder satisfies the requirements of Section 364 of the Penal Code, 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 inter-governmental organisation or any other person to do or abstain from doing any act or to pay a ransom. B

**56.** It was, thus, obligatory on the part of the learned Sessions Judge, Daman to frame a charge which would answer the description of the offence envisaged under Section 364-A of the Penal Code. It may be true that the kidnapping was done with a view to get ransom but the same should have been put to the appellant while framing a charge. The prejudice to the appellant is apparent as the ingredients of a higher offence had not been put to him while framing any charge.” C

b) In *Vishwanath Gupta*, it was observed as under:

“**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. F

**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 G

- A 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.”
- B c) In *Vikram Singh*, it was observed as under:
- “**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. These ingredients are, in our opinion, distinctly different from the offence of extortion under Section 383 IPC. The deficiency in the existing legal framework was noticed by the Law Commission and a separate provision in the form of Section 364-A IPC proposed for incorporation to cover the ransom situations embodying the ingredients mentioned above.”
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- E It is necessary to prove not only that such kidnapping or abduction has taken place but that thereafter, the accused threatened to cause death or hurt to such person or by his conduct gave rise to a reasonable apprehension that such person may be put to death or hurt or cause hurt or death to such person in order to compel the Government or any foreign
- F State or international, inter-governmental organization or any other person to do or abstain from doing any act or to pay a ransom.

14. Most recently, this Court in *SK Ahmed* has emphasised that Section 364A of the IPC has three stages or components, namely,

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

The relevant portions of the said judgement are extracted as under: A

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

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

(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” C

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

The first essential condition as incorporated in Section 364-A is “whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction”. The second condition begins with conjunction “and”. The second condition has also two parts i.e. (a) threatens to cause death or hurt to such person or (b) by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt. Either part of above condition, if fulfilled, shall fulfil the second condition for offence. 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 words “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 364-A contains a heading “Kidnapping for ransom, etc.” The kidnapping by a person to demand ransom is fully covered by Section 364-A. E

13. We have noticed that after the first condition the second condition is joined by conjunction “and”, thus, whoever kidnaps or abducts any person or keeps a person in detention after such F

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- A kidnapping or abduction and threatens to cause death or hurt to such person.

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

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

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

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

**F** (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;

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

Thus, after establishing first condition, one more condition has to be fulfilled since after first condition, word used is “and”. Thus, in

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addition to first condition either Condition (ii) or (iii) has to be proved, failing which conviction under Section 364-A cannot be sustained.”

Thus, this Court in ***SK Ahmed*** set aside the conviction under Section 364A of the IPC and modified the same to conviction under Section 363, for the reason that the additional conditions were not met by observing as follows:

“**42.** The second condition having not been proved to be established, we find substance in the submission of the learned counsel for the appellant that conviction of the appellant is unsustainable under Section 364-A IPC. We, thus, set aside the conviction of the appellant under Section 364-A. However, from the evidence on record regarding kidnapping, it is proved that the accused had kidnapped the victim for ransom, demand of ransom was also proved. Even though offence under Section 364-A 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 paras 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.”

15. Now, we shall consider the applicability of the above ratio to the present case and deal with appellants’ argument about contradictions in the statements of the PW-21. We agree with the High Court that the statements are crucial. We also note that the Courts below, as is usual in kidnapping cases, have placed singular reliance on the testimony of PW-21 to prove the element of ‘threat to cause death or hurt’, or to determine whether the appellants’ conduct gives rise to a reasonable apprehension that such person may be put to death or hurt. We have perused the statement of PW-21 made to the police on 18.02.2000, i.e., two days after he had returned home from the captivity of appellants-herein. The statements record that he was threatened at night by the appellants with a ‘revolver,’ which was claimed to be possessed by them. The exact statement was, “*One handkerchief and one black cloth were tied on the eyes and said to me they have revolver and they will kill him if [he] raises any voice.*” However, the statement before

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- A the Trial Court dated 15.04.2002, nearly two years after the initial statement, includes a substantial detail that was omitted in the previous statement. After mentioning that the PW-21 was forcibly put inside the car and gagged, the statement reads, “*The occupants threatened me with a knife and pistol and threatened me to kill.*” Thus, three crucial changes may be noticed: first, a change in the exact timing of the threat; second, the specificity of the delivery of the threat to kill; and third, omission of the intent behind the threat i.e. to prevent PW-21 from crying out. These details are crucial to proving the second ingredient of the charge under Section 364A and essential to bring home the guilt under this section namely, threat resulting in giving rise to a reasonable apprehension that such person may be put to death or hurt. It is clear that this ingredient has not been proved beyond reasonable doubt. The Courts below did not thoroughly address this doubt before convicting the appellants. For proving the ingredient of threat, the intimidation of the child victim, for the purpose of making him silent, cannot be enough. If the sentence carrying a maximum sentence of death and a minimum sentence of life sentence has such a low evidentiary threshold, the difference between punishments for kidnapping under 363, 364 and 364A shall become meaningless.

- E 16. In particular, we note that the High Court did not apply the precedent in ***Malleshi vs. State of Karnataka, (2004) 8 SCC 95 (“Malleshi”)*** properly. The facts in the said case, concerning the kidnapping of a major boy, revolved around the party to whom the demand for ransom ought to be made to bring home the guilt under Section 364A. It was observed in ***SK Ahmed*** that the ***Malleshi*** case dealt with demand for ransom and held that demand originally was made to the 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 the meantime does not take away the effect of conditions of Section 364A. As clarified by this Court in ***SK Ahmed***, ***Malleshi*** was merely concerned with ransom and its ratio would be of no assistance to cases where the fulfilment of other ingredients of crime under Section 364A is brought into question.

- H 17. In the facts of the present case, we therefore agree with the submission of the learned counsel for the appellants, Sri Gaurav Agrawal, that the conviction of the appellants is unsustainable under Section 364A of the IPC.

18. This Court has wide power to alter the charge under Section 216 of the Cr.PC whilst not causing prejudice to the accused, as reiterated in *Jasvinder Saini vs. State (Govt. of NCT of Delhi) (2013) 7 SCC 256, para 11; Central Bureau of Investigationvs. Karimullah Osan Khan (2014) 11 SCC 538, paragraph Nos. 17 and 18*. The following observations of this Court in *Dr. Nallapareddy Sridhar Reddy vs. State of Andhra Pradesh (2020) 12 SCC 467, paragraph No. 21* are also instructive:

“**21.** From the above line of precedents, it is clear that Section 216 provides the court an exclusive and wide-ranging power to change or alter any charge. The use of the words “at any time before judgment is pronounced” in sub-section (1) empowers the court to exercise its powers of altering or adding charges even after the completion of evidence, arguments and reserving of the judgment. The alteration or addition of a charge may be done if in the opinion of the court there was an omission in the framing of charge or if upon *prima facie* examination of the material brought on record, it leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the alleged offence. The test to be adopted by the court while deciding upon an addition or alteration of a charge is that the material brought on record needs to have a direct link or nexus with the ingredients of the alleged offence. Addition of a charge merely commences the trial for the additional charges, whereupon, based on the evidence, it is to be determined whether the accused may be convicted for the additional charges. The court must exercise its powers under Section 216 judiciously and ensure that no prejudice is caused to the accused and that he is allowed to have a fair trial. The only constraint on the court’s power is the prejudice likely to be caused to the accused by the addition or alteration of charges. Sub-section (4) accordingly prescribes the approach to be adopted by the courts where prejudice may be caused.”

Therefore, we allow the appeals in part and set aside the conviction under Section 364A of the IPC.

The judgments of the learned Trial Court and the High Court are modified to the above extent. The appellants are now convicted for the offence under Section 363 of the IPC; i.e., kidnapping and sentenced to

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- A imprisonment for seven years and a fine of Rs.2000/- . If the appellants have completed imprisonment of more than seven years with remission and have paid the fine of Rs.2000/- , we direct the appellants to be released forthwith; if not on bail. If not, the appellants shall surrender within a period of four weeks and serve the remainder of the sentence.

Divya Pandey

Appeals partly allowed.

(Assisted by : Pranav Dhawan and Shevali Monga, LCRAs)