MALLESHI

v.

STATE OF KARNATAKA

SEPTEMBER 15, 2004

[ARIJIT PASAYAT AND PRAKASH PRABHAKAR NAOLEKAR, JJ.]

Penal Code, 1860—Section 364A—Abduction of son for getting ransom from father—Ransom demand conveyed to son but not to the father due to arrest of accused—Conviction by Trial Court upheld by High Court—On appeal, Held: Object of abduction was ransom and merely because the demand could not be conveyed to father, that did not take away the offence of accused out of purview of Section 364A—Penal Code, S. 362.

Words and phrases—'Induce', 'deceit', 'ransom', 'demand'—Meaning of in context of Sections 362 and 364A of Penal Code, 1860.

According to prosecution, while PW2 was coming out of his college along with his classmate PW-3 and friend PW-4, appellant-accused called and told him that he knew his father. Appellant enquired from PW2 about fees and other expenses in the college stating that he wanted to admit his son, and accosted him towards a jeep parked nearby informing him that his son was there. PW2 went there and was asked to sit in the jeep. Appellant sat by his side along with three other co-accused. After the doors of the jeep were closed and it was driven for some distance, PW2 was threatened not to raise any voice otherwise he would be murdered. Enquiry was made from PW2 about phone number stating that his father will be asked to pay four lakhs of rupees for his release. On the way, however, PW2 was allowed to go for answering call of nature. He was accompanied by accomplice of appellant, and was also given water to drink. While the jeep was stopped near a village and accused got down for buying cigarettes, PW2 escaped.

He went and informed villagers who came and caught hold of all the accused, and informed police about the incident. They were all taken to police station and complaint given by PW-2 was registered. During investigation, PW-3 and PW-4 stated that they witnessed appellant calling PW-2 and their going together towards the vehicle. According to prosecution PW2 was abducted from college by appellant along with

A three co-accused who were in the jeep during the course of the incident. During trial though PW-4 resiled from his statement, his evidence corroborated that of PWs 2 and 3 to the extent that he had seen PW-2 going in the company of somebody towards the jeep. Trial court convicted appellant on evidence of PW2 and PW3 for offence under B Section 364A of Penal Code, 1860, while co-accused were acquitted for lack of evidence. High Court upheld the judgment of trial court. Hence the present appeal.

Appellant contended that since demand was not conveyed to father of PW2, the intention to demand was not fulfilled.

C

Respondent-state contended that in view of the clear language of Section 364A IPC it was evident that appellant was rightly convicted under that section.

D Dismissing the appeal, the Court

HELD : 1. Factual position found by the trial court and High Court goes to show, the object of abduction was for ransom. This was clearly conveyed to the victim PW-2. He was even conveyed the amount to be paid. There is no infirmity in the judgment of the courts below to E warrant any interference. [447-D; 448-A]

2.1. Section 364A of IPC refers to both 'Kidnapping' and 'Abduction'. Latter 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 F inducement must be the going of the victim from any place. The case at hand falls in the second category. [446-C, D]

2.2. To 'Induce, means to 'lead into'. Deceit according to its plain dictionary meaning signifies anything intended to mislead another. It is G a matter of intention and even if promise held out by the accused was fulfilled by him, question that arises is whether he was acting in a *bona fide* manner. [446-E]

Black's Law Dictionary, referred to.

I. 3. It cannot be laid down as a straight-jacket formula that the

demand for payments has to be made to a person who ultimately pays. After making the demand to the kidnapped or abducted person merely because the demand could not be conveyed to some other person, as the accused is arrested in the meantime, does not take away the offence out of purview of Section 364A IPC. It has to be seen in such a case as to what was the object of kidnapping or abduction. Essence of abduction is causing to stay in isolation and demand for ransom. The demand in the present case has already been made by conveying it to the victim. There can be no definitive manner in which demand is to be made. Who pays the ransom is not the determinative fact. [447-D, E, F, H; 448-A]

Netra Pal **v.** *The State (NCT of Delhi),* **(2001) Crl. L.J. 1669, distinguished.**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1343 of 2002.

From the Judgment and Order dated 26.6.2002 of the Karnataka High Court in Crl. A. No. 236 of 2000.

Bimal Roy Jad (A.C.) for the Appellant.

Sanjay R. Hegde for the Respondent.

The Judgment of the Court was delivered by

ARIJIT PASAYAT, J. : Appellant was convicted for offence punishable under Section 364 A of the Indian Penal Code, 1860 (in short the 'IPC'), and sentenced to life imprisonment by the learned First Additional Sessions Judge, Chitradurga (hereinafter referred to as the 'trial court'). In appeal Karnataka High Court by the impugned judgment confirmed the conviction and sentence. It is to be noticed that four persons faced trial. Appellant-accused for the sake of convenience is described as A-1 and the co-accused as A2 to A4. They were acquitted by the trial court.

Accusations which led to the trial of the accused persons are as follows:

Vijayabhasker, (PW 2) was a student of S.J.M. College, situated on Holalkere Road in Chitradurga, he was studying I year B.Sc., and was staying

A at Challakere in his Uncle's house. He used to come to Chitradurga to attend the college daily by bus. Jagadish (PW 3) was a classmate of PW 2 and resident of Challakere, both of them usually come together to Chitradurga from Challakere. On 25.11.1997 Vijayabhaskar, (PW 2), Jagadish (PW 3) and their friend Raghavendra, (PW 4) finished their practical classes and came B out of the college at about 2-45 p.m. At that time, a person called PW 2 by taking his name, he turned and saw that person was wearing white shirt and pant. PW 2 went to him and was told by that person that he knew his father Hanumantha Rao, as he used to come to their village Chintarlapalli in Anantapur District, for Tamarind business. He enquired with PW 2 about C the fees and other expenses stating that he wanted to admit his son. PW.2 told him that about Rs. 2,000 will be the expenses in the college. A Trax Jeep was parked nearby. The said person took PW 2 towards the Trax jeep informing him that his son is there. PW 2 went there, he was asked to sit in the jeep. Three other persons also came and sat in the jeep. The person who took him to the jeep also sat by his side, there were two D drivers in the jeep, they closed the doors of the jeep and it was driven towards Challakere on N.H. 4. They treated PW 2 well till they crossed Challakere gate. Thereafter he was threatened not to raise any voice, otherwise he will be murdered. After they crossed Challakere, they enquired from him about the phone number stating that they will ask E his father to pay Rs. 4,00,000 to them for his release. PW 2 told them that such huge amount cannot be arranged and hardly they may get about Rs.50,000 by raising loan from others. They told him that their Boss wanted at least Rs. 2,00,000. On the way, they allowed him to meet the call of nature however some of them accompanied him. He was given water to drink. They F stopped the vehicle near a village and the accused persons got down for buying cigarettes. The drivers in the jeep asked him to run away, and accordingly PW.2 ran away, he came to know that the place was Byrapur village. He went and informed the villagers and got them near the jeep, they surrounded the said jeep, caught hold the accused persons, informed to the police, Molakalmurnu. They were all taken to the police station along with G the said jeep. Later on PW 2 gave complaint as per Ex.P.2, which was registered. Subsequently, the case was transferred to Chitradurga Rural Police and then the charge sheet came to be filed. According to prosecution accused No. 1 Malleshi was the person who was in white shirt and pant, who abducted PW.2 from the college and accused No.2 to 4 were the other H three persons who were in the jeep during the course of the incident.

Trial court analysed the evidence of PW 2 who was the main witness and whose abduction was alleged. PWs. 3 and 4 were also stated to have witnessed a part of the occurrence i.e. A 1 calling the victim PW-2 and their going together towards the vehicle. Though PW 4 resiles from the statement made during investigation, his evidence corroborated that of PWs. 2 and 3 to the extent that he had seen PW 2 going in the company of somebody towards the trax jeep. PWs. 6 and 11 were the drivers of the vehicle. They resiled from their statements recorded during investigation. Trial court took into account the evidence of PWs 2 and 3 and the fact that the vehicle and the accused persons were confined by the villagers and they were arrested from the spot found the accused /appellant guilty while acquitting A-2 to A-4 as the evidence was not found sufficient to convict them.

In appeal the High Court found that the analysis of factual position as done by the trial court did not suffer from any infirmity. It also analysed the evidence in detail and affirmed the view of the trial court. The appeal was accordingly dismissed.

In support of the appeal learned counsel for the appellant submitted that the evidence of PW 2, the alleged victim was not sufficient to hold the appellant guilty. PW 2 had no earlier acquaintance with the accused-appellant. Since there was no test identification parade, it was not proper on the part of the trial court to hold the accused guilty. The alleged demand of ransom has not been established. In any event, no demand has been conveyed to any person for a ransom and therefore Section 364 A has no application.

In response learned counsel for the State of Karnataka supported the judgments of the trial court and the High Court and submitted that the evidence has been analysed carefully by both the trial court and the High Court and no infirmity has surfaced. It was further submitted that keeping in view the clear language of Section 364 A it is evident that the accused has been rightly convicted under Section 364 A of the IPC.

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

A death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt, or causes hurt or death to such person in order to compel the Government or

B (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."

C 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.

D 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.

E 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?

F 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.

G 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. Strong reliance was placed on a decision of the Delhi High Court in *Netra Pal* v. *The State (NCT of Delhi),* (2001) Crl. L.J. 1669 to contend that since the ransom demand was not H conveyed to the father of PW 2, the intention to demand was not fulfilled.

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

Netra Pal's case (supra) was one where a child was kidnapped. The court found as a fact that since the victim was a child, demand for ransom could not have been made to him and only the demand to pay the ransom could have been made to his guardians. In that factual background it was held that the offence was not under Section 364 A but was under Section 362 of the IPC. Accordingly conviction of the accused was altered to offences relatable to Sections 363 and 365 of the IPC.

In the instant case as the factual position found by the trial court and the High Court goes to show, the object of abduction was for ransom. This was clearly conveyed to the victim PW-2. He was even conveyed the amount to be paid. It cannot be laid down as a strait-jacket formula that the demand for payments has to be made to a person who ultimately pays. By way of illustration it can be said that a rich business man is abducted. He is told that for his release his family members have to pay a certain amount of money; but money actually belongs to the person abducted. The payment for release is made by the persons to whom the demand is made. The demand originally is made to the person abducted or kidnapped. After making the demand to the kidnapped or abducted person merely because the demand could not be conveyed to some other person, as the accused is arrested in the meantime, does not take away the offence out of the purview of Section 364A. It has to be seen in such a case as to what was the object of kidnapping or abduction. The essence of abduction as noted above is causing to stay in isolation and demand for ransom. The demand in the present case has already been made by conveying it to the victim. In *Netra Pal's* case (supra) the High Court noted that there was no demand to pay. The factual position in that case as noted above is that the victim was a child to whom no demand could have been made. In that background the High Court took the view that Section 364A has no application as no demand has been communicated. The position factually is different here. Ultimately the question to be decided is "what was the intention? Was it demand of ransom"? There can be no

A definite manner in which demand is to be made. Who pays the ransom is not the determinative fact, as discussed supra.

Above being the position, there is no infirmity in the judgment of the courts below to warrant any interference.

B

Appeal is dismissed.

V.S.S. Appeal dismissed.