



AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1234 of 2023

1. Yogesh Sahu S/o Late Vijay Sahu, aged about 36 years R/o Rajendra Nagar Near Durga Mata Chowk Durg Thana New Rajendra Nagar Raipur District Raipur Chhattisgarh
2. Narendra @ Nandu Bomarde S/o Mavdas Bomarde aged about 39 years R/o House No. 162 Ward No. 01 in Front of Khallari Temple Hirapur Thana Kabirnagar District Raipur Chhattisgarh

---- Appellants

Versus

State of Chhattisgarh, Through : Aarkshi Kendra Kabir Nagar Raipur District Raipur Chhattisgarh

---- Respondent

(Cause-title taken from Case Information System)

For Appellant No.1 : Mr. B.P. Singh, Advocate
For Appellant No.2 : Mr. Jaideep Singh Yadav, Advocate
For Respondent/State : Mr. Pankaj Singh, Panel Lawyer

Hon'ble Shri Ramesh Sinha, Chief Justice

Hon'ble Shri Sachin Singh Rajput, Judge

Judgment on Board

Per Ramesh Sinha, Chief Justice

28.06.2024

1. This criminal appeal under Section 374(2) of the CrPC is directed against the judgment dated 25.05.2023 passed by the IX Additional Sessions Judge, Raipur, District – Raipur (C.G.) in Sessions Trial No. 226 of 2022, whereby the learned Additional Sessions Judge has convicted and sentenced the appellants with a direction to run all the sentences concurrently in the following manner :

CONVICTION	SENTENCE
U/S 364A of IPC	Life imprisonment and a fine of Rs. 2000/-, in default of payment of fine, 01 year additional RI



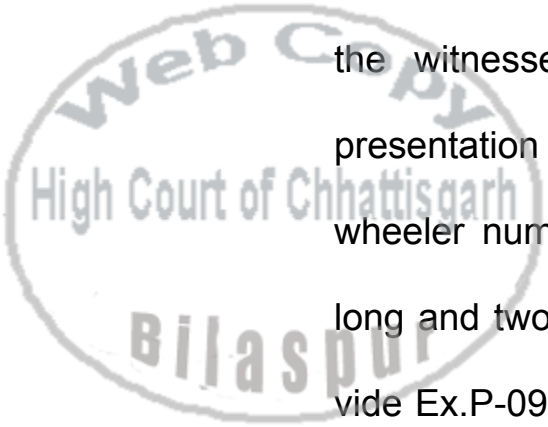
U/S 343 of IPC	R.I. for 2 years
U/S 323/34 of IPC	R.I. for 6 months

2. Case of the prosecution, in brief, is that a report was lodged by the complainant Bhagwanta Sahu, that at about 06:30 pm on 03.04.2022, the appellants - Yogesh Sahu and Nandu came to his house and said that they wanted to see a car, then they sat with him in the vehicle Maestro bearing registration number CG-04-HU-4269, but they did not show him any vehicle and took him from Patan to Raveli village, there they held him as hostage in their house and told him to tell his wife to bring the remaining money from Ghazi Khan, only then he would be released and kept him tied with a chain inside the room. The next day on Monday, when he tried to escape by breaking the door, he was beaten up by the accused/appellants and on Monday itself, they took him as hostage in a four-wheeler to Nayakbandha, Abhanpur and on Tuesday took him towards Kanker. Yogesh Sahu sent the photo of the complainant's hands and feet tied from the mobile phone of the complainant on the mobile phone of his wife Radha Sahu asking her to get money from Ghazi Khan. On 07.04.2022, his wife Radha told Yogesh Sahu that Ghazi Khan has deposited two lakh rupees in Kailash Seth's account, he is giving cheque for the remaining amount, leave Bhagwanta. The applicant suffered injuries on both his thighs due to the assault.
3. Based on the written complaint (Ex.P-01) submitted by complainant Bhagwanta Sahu in Kabir Nagar Police Station





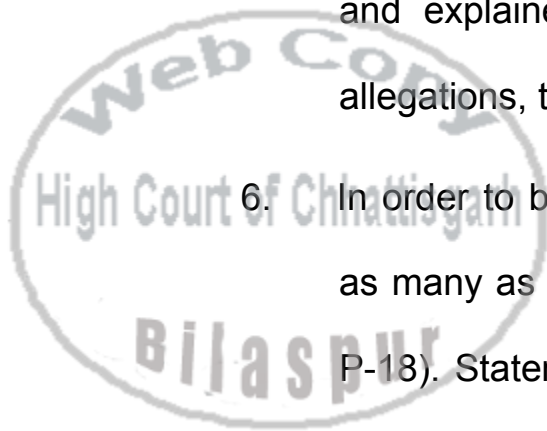
regarding the incident, the FIR was registered under Crime No. 49/2022 for offence under Sections 365, 343, 323, 34 of the Indian Penal Code vide Ex.P-02 against the appellants. For conducting MLC of injured Bhagwanta Sahu, MLC Form (Ex.P-11) was sent to AIIMS Hospital, Raipur and MLC Report (Ex.P-12) was received. During investigation, as per the statement of the complainant, the visual map of the incident site (Ex.P-03) was prepared in front of the witnesses. For being present in the investigation proceedings, notice under Section 160 CrPC (Ex.P-10) was given to witnesses Dilip Haldhar and Komal Kurre and memorandum statement of accused Yogesh alias Raju Sahu (Ex.P-08) was recorded before the witnesses. On the basis of memorandum statement, on presentation by accused Yogesh Sahu, a vehicle Maestro two wheeler number CG-04-HU-4269 and an iron chain about 9 feet long and two locks and keys were seized in front of the witnesses vide Ex.P-09. During investigation, certificate of Section 65B of the Evidence Act was obtained from Radha Sahu in respect of documents Articles A-01 to A-02 vide Ex.P-15 and certificate of Section 65B of the Evidence Act was obtained from Ghazi Khan in respect of documents Articles A-03 to A-10 vide Ex.P-16. During investigation, on 09.04.2022, when sufficient grounds were found that accused Yogesh Sahu has committed the crime, he was arrested as per arrest sheet (Ex.P-13) and information about his arrest was given to his family members vide Ex.P-14 and on 01.06.2022, accused Narendra alias Nandu Bomarde was arrested as per arrest sheet (Ex.P-17) and information about his arrest was





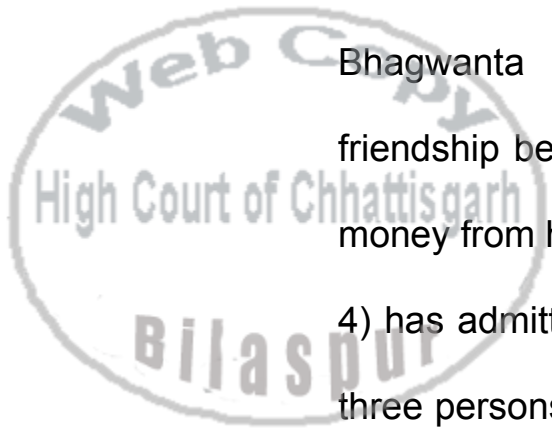
given to his wife Pratima Bomarde vide Ex.P-18.

4. After completion of investigation, on 06.06.2022 charge-sheet was submitted against the accused/appellants before the Court of Judicial Magistrate First Class, Raipur, wherein Criminal Case No. 7107/2022 was registered. After the case was acquired on 12.09.2022, when it was received by the Court of Sessions on 27.09.2022, Sessions Trial No. 226/2022 was registered and the learned trial Court i.e. IX Additional Sessions Judge, Raipur received it on transfer on 27.09.2022.
5. When the allegations mentioned in the charge-sheet was read out and explained to the accused/appellants, they denied the said allegations, their plea was written.
6. In order to bring home the offence, the prosecution has examined as many as 09 witnesses and exhibited 18 documents (Exs.P-1 to P-18). Statements of the accused/appellants under Section 313 of the CrPC were recorded in which they denied guilt and stated that they have been falsely implicated. They have not examined any witness in their defence.
7. The trial Court upon appreciation of oral and documentary evidence available on record, by its judgment dated 25.05.2023 convicted and sentenced the accused/appellants as mentioned hereinabove, against which, this criminal appeal has been preferred.
8. Learned counsel for the appellants submitted that looking to the evidence of the complainant – Bhagwanta Sahu, there is no allegation that the appellants have demanded any ransom and it has come in the evidence that they have detained him and the





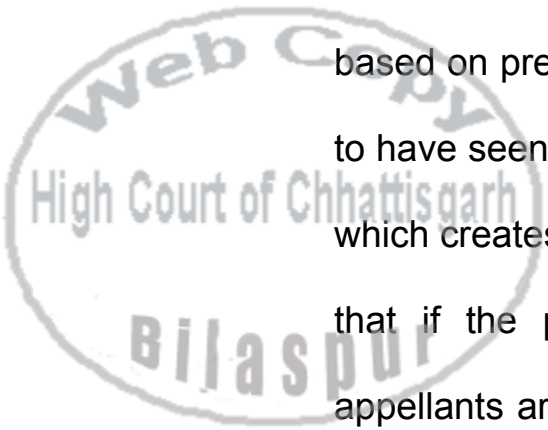
reason behind it was that he has helped appellant-Yogesh Sahu to sell the vehicle i.e. (Truck) to one Ghazi Khan and Ghazi Khan has not paid the total amount to him and therefore, due to that reason appellant Yogesh Sahu along with other co-accused Narendra @ Nandu have detained him only to take his money back. In para 10 of his cross-examination, he has admitted that sold vehicle was kept by Ghazi Khan and 6 lakh rupees which was sale amount for the said vehicle was not returned by Ghazi Khan to appellant Yogesh Sahu till date. He further submitted that the prosecution witness Ghazi Khan (PW-3) has specifically stated in paragraph 14 of his evidence that Bhagwanta was not abducted because Bhagwanta and the appellants were friends and due to the friendship between them, they have made a false story to recover money from him. It has been also stated that Ved Vyas Sahu (PW-4) has admitted in para 4 of his evidence that he took them all the three persons upto Chitrakoot and after some distance on Highway all three persons taken meal and told him that they are willing to stay for 2-3 days there and they have requested him to stay with them, but he was not ready to stay there and then, he left them near Jagdalpur and returned back and also they have not paid the fare amount. In para 13, he admitted that the complainant was never tied by anything like chain or rope. He contended that prosecution witness Smt. Radha Sahu (PW-5), wife of the complainant has admitted in paragraph 13 of her evidence that she has not lodged missing report, but she admitted that the sale amount of the truck was not paid to appellant Yogesh Sahu till date.





Looking to her evidence, it is clear enough that the appellants and her husband i.e. complainant are friends and her husband has sold the vehicle i.e. (Truck) of the appellant – Yogesh Sahu to one Ghazi Khan and Ghazi Khan has not paid the purchase amount to appellant Yogesh Sahu and therefore, due to that reason, there is some dispute between the appellants and her husband, but it is not a case of the ransom because the appellants have not called her to pay any ransom from her in lieu of leaving her husband and it is possible that her husband and appellants have made planning to receive the rest of the amount from Ghazi Khan and as such, the conclusions and findings arrived at by the learned trial Court are based on presumption and surmises. The learned trial Court ought to have seen and held that all the prosecution witnesses are hostile which creates doubts on the prosecution case. He lastly contended that if the prosecution story is taken as it is, then also the appellants are not guilty for the offence under Sections 364A, 343, 323 read with Section 34 of IPC. Therefore, the appeal deserves to be allowed and the impugned judgment deserves to be set aside.

9. On the other hand, Mr. Pankaj Singh, learned Panel Lawyer for the respondent/State, would support the impugned judgment and submit that the prosecution has been able to bring home the offence beyond reasonable doubt and the appellants have rightly been convicted for the aforesaid offences and as such, the appeal deserves to be dismissed.
10. We have heard learned appearing for the parties and considered their rival submissions made hereinabove and also went through





the records with utmost circumspection.

11. The first question for consideration would be, whether the trial Court is justified in convicting the appellant for offence under Section 364A of the IPC ? Section 364A of the IPC states as under:-

“364A. Kidnapping for ransom, etc.-Whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction and threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt, or causes hurt or death to such person in order to compel the Government or any foreign State or international inter-governmental organisation or any other person to do or abstain from doing any act or to pay a ransom, shall be punishable with death, or imprisonment for life, and shall also be liable to fine.”

12. Section 364A of the IPC came up for consideration before the Supreme Court in the matter of Shaik Ahmed v. State of Telangana¹, in which Their Lordships have considered the provision contained in Section 364A of the IPC and held as under:-

“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”

(ii) “and threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt,

(iii) or causes hurt or death to such person in order to compel the Government or any foreign State or international inter- governmental organisation or any other person to do or abstain from doing any act or to pay a ransom”

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

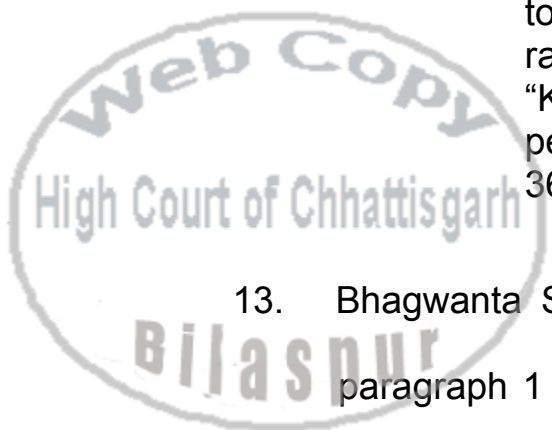
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fine.”

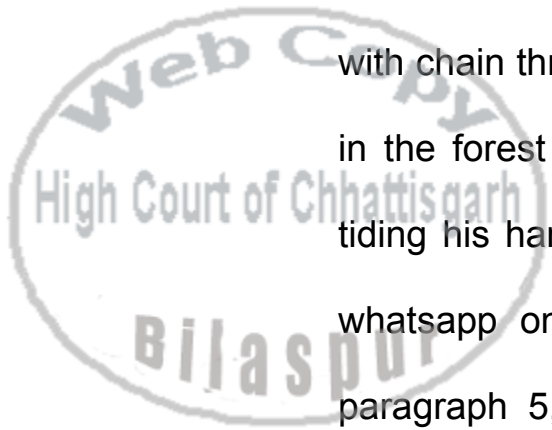
The first essential condition as incorporated in Section 364-A is “whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction”. The second condition begins with conjunction “and”. The second condition has also two parts, i.e., (a) threatens to cause death 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 word “or causes hurt or death to such person in order to compel the Government or any foreign state to do or abstain from doing any act or to pay a ransom”. Section 364-A contains a heading “Kidnapping for ransom, etc.” The kidnapping by a person to demand ransom is fully covered by Section 364-A.”

13. Bhagwanta Sahu (PW-1), who is the complainant, has stated in paragraph 1 of his evidence that he know and recognize accused Yogesh Sahu and Narendra alias Nandu, they were his friends. In paragraph 2, he has stated that earlier he used to do driving work, now he do welding work. The incident occurred on 03.04.2022 at around 03:30 pm. At that time he was at him home in Hirapur, when the accused came to his house and told him that Raja Sahu's twelve-wheeler truck was parked near Kukda-Raveli, to show which he had gone in Yogesh Sahu's vehicle Honda Maestro, whose number he do not remember today. Accused Nandu also went with them in the same two wheeler vehicle. The accused took him to their old house in Raveli, where the house was locked, which was broken by the accused. The accused had taken out the chain lock





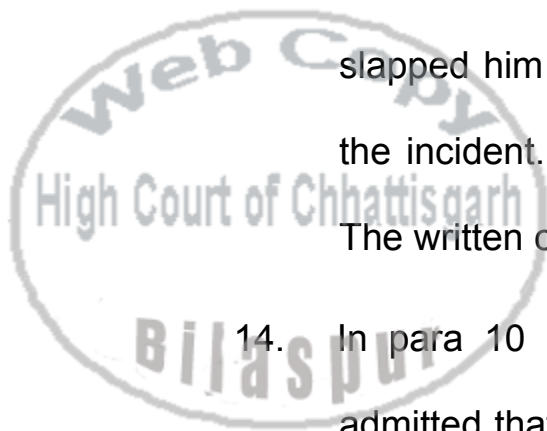
from their vehicle and tied his hands and legs and kept him in that old house. In paragraph 3, he further stated that on the same day of the incident, his wife Radha Sahu called accused Yogesh Sahu and asked where is her husband who had gone with you. Then accused Yogesh Sahu had told his wife that he had left him at Hirapur Chowk. In paragraph 4, he has stated that after that, the accused along with two other people took him from Raveli's old house to Abhanpur Nayakbandha village in a Tata Ace Car. On 04.04.2022, after renting Uttam Sahu's Suzuki Omni car, he was taken to Gariyaband by accused Yogesh Sahu and Narendra, where they kept him in a ruined house with his hands and legs tied with chain throughout the night and on the next day on 05.04.2022, in the forest of Gariaband, accused Yogesh Sahu took his photo tiding his hands and anklets by chain and sent the same through whatsapp on the mobile number of his wife Radha Sahu. In paragraph 5, he has stated that he know and recognize Ghazi Khan, who deals in buying and selling vehicles like Truck. He had sold accused Yogesh Sahu's car Ashok Leyland Truck 14 Wheeler to Ghazi Khan. Accused Yogesh Sahu had received Rs 1,62,000/- of the said vehicle from Ghazi Khan. The remaining amount was not given by Ghazi Khan to accused Yogesh Sahu and since he had introduced accused Yogesh Sahu to Ghazi Khan, therefore, the accused demanded the outstanding amount of the said truck from his wife Radha Sahu. In paragraph 6, he has stated that the accused took him from the forests of Gariyaband towards Kanker and from there took him to Chitrakot and from there to Jagdalpur.





From Gariyaband he was taken to Kanker in a Force four-wheeler. In Jagdalpur, accused Yogesh Sahu received a call from Ghazi Khan, in which Ghazi Khan told that the remaining amount has been kept with Kailash Transport Tantibandh Chowk, you guys take the outstanding amount and leave Bhagwanta alone. Yogesh Sahu told Ghazi Khan that he do not want the money, put it in his account. After that the accused took him to Devbhog and from there came to Raipur Bhathagaon. In Bhathagaon, the police caught Yogesh Sahu and Nandu and brought all three of them to Kabirnagar Police Station, Raipur. In paragraph 7 he has stated that he was beaten by the accused. Accused Yogesh Sahu had slapped him five-six times. He had complained to the police about the incident. He had given a written complaint about the incident. The written complaint made by him was Ex.P-01.

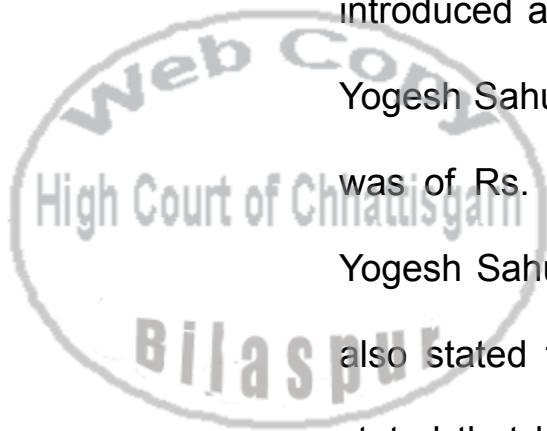
14. In para 10 of cross examination, Bhagwanta Sahu (PW-1) has admitted that sold vehicle was kept by Ghazi khan and Rs. 6 lakhs which was sale amount for the said vehicle was not returned by Gazi khan to appellant Yogesh Sahu till date. In Para 11, he has admitted that he travelled with the accused in two wheeler in many places and that places were crowded places. He has also admitted that accused were moving here and there and he was sitting in the vehicle. In para 12, he admitted that written report (Ex.P-1) was typed by Kabir Nagar Police Station. In para 14, he admitted that in the police station both complainant and the appellants were trying for settlement. The statements given in paras 17,18,19,21 and 22 were full of contradictions and those facts are not available in Exs.





P-1, P-2 and D/1. In para 23, he has admitted that he has travelled different places which were the public road where many people were found there as well as traffic police and near traffic signals the vehicle maintained the traffic rules, but he has never informed to anyone or not asked for any help. He also admitted that on different places the room and other required things were arranged.

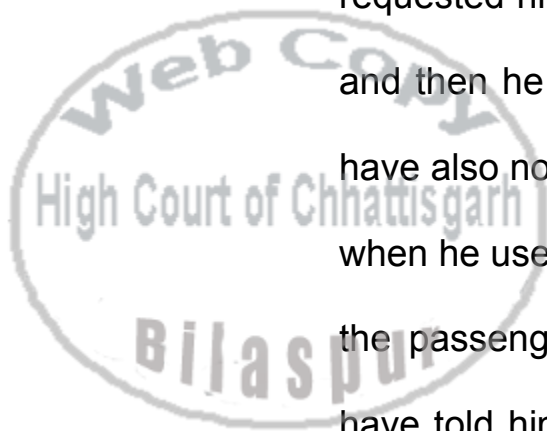
15. PW-2 Gautam Sahu has not supported the case of the prosecution story and turned hostile.
16. As per evidence of Ghazi Khan (PW-3), he knows appellant Yogesh Sahu and complainant Bhagwanta because Bhagwanta has introduced appellant Yogesh Sahu. As per his evidence, appellant Yogesh Sahu's vehicle was purchased by him and the total amount was of Rs. 6 lakhs and he has paid some amount to appellant Yogesh Sahu and Rs.2 lakhs was balance to pay to him. He has also stated that wife of the complainant came to his house and stated that her husband was abducted by the appellants and the appellants have asked to return the rest of the money of his truck and appellant Yogesh Sahu has called her in mobile and asked to deposit the amount in the account of Kailash Seth and thereafter, they will release her husband and if the money will not be returned, then they will cause harm to her husband. But this witness has fairly submitted that when appellant Yogesh Sahu has called him from his phone looking to the conversation it doesn't seem that the appellants have abducted the complainant. In Para 12 he has admitted that for sale of the said vehicle only complainant has come before him for selling it for Rs. 6 lakhs and the said amount





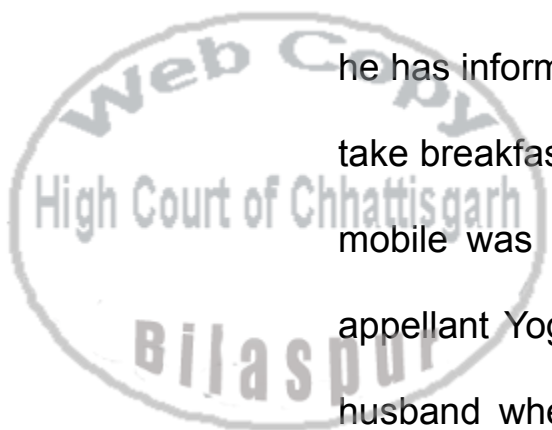
was fixed for the sale value. He himself stated that he has talked to Yogesh on the phone. In para 14, Ghazi Khan has stated that Bhagwanta was not abducted because Bhagwanta and the appellants were friends and due to the friendship between them, they have made a false story to recover money from him.

17. PW-4 Ved Vyas Sahu, driver of the vehicle in which complainant was alleged to be abducted, in para 4 of his evidence has admitted that he took them all the three persons upto Chitrakot and after some distance on Highway all three persons taken meal and told him that we are willing to stay for 2-3 days there and they have requested him to stay with them but he was not ready to stay there and then he left them near Jagdalpur and returned back and they have also not paid the fare amount. In para 7, he has admitted that when he uses to travel with passengers he hear the conversation of the passengers and he fairly admitted that all the three persons have told him that they are friends and used to talk outside of the vehicle. In para 11, he has admitted that all three persons were not having any luggage or anything and they were empty handed and they used to roam separately outside of the vehicle and used to come again in the vehicle. In para, 13 he admitted that victim was never tied by anything like chain or rope. In para 15, he admitted that his vehicle was booked by three persons to visit the tourist place and he admitted that all three persons along with him were free to move anywhere.
18. As per evidence of PW-5 Smt. Radha Sahu, wife of the complainant, on 03.04.2022 at about 03:30 pm appellant Yogesh





Sahu and co-accused Nandu came to her house and her husband was talking with them outside from the house and then her husband has informed her that they are going to Patan for seeing a vehicle. At 6:00 pm, she called her husband, then he has narrated that he is with appellants, but at 10:00 PM his phone was not reachable, but after 5 minutes her husband has called her and told that he is with appellants at Patan and he would be late but upto 12 pm, her husband did not returned back and at morning she has called to appellant Yogesh Sahu, then he has told that they have left her husband at 5 to 5:30 pm at Yaduwanshi Chowk, Hirapur. She has stated that on 04.04.2022, she called her husband at 12 pm then he has informed that he is with the appellants at Patan and they will take breakfast and will stay for 2 days, but thereafter her husband's mobile was switched off. She further stated that on 05.04.2022, appellant Yogesh Sahu sent a photograph from the mobile of her husband where it was seen that her husband was tied with iron chain and thereafter a Whatsapp message was sent by her husband and he sent the address of Ghazi Khan and asked her to get the money from Ghazi Khan and thereafter she went to the house of Ghazi Khan where he was ready to return Rs. 1 lakh in cash and he has assured that he will return Rs.1 lakh afterwards, then she called appellant Yogesh Sahu about the said fact, then he has told if Ghazi Khan will pay the total amount to him, he will leave Bhagwanta and on the next date 06.04.2022 she has reported the matter to the police and thereafter on 07.04.2022 police has arrested them. The statements made by this witness in paras 8,9



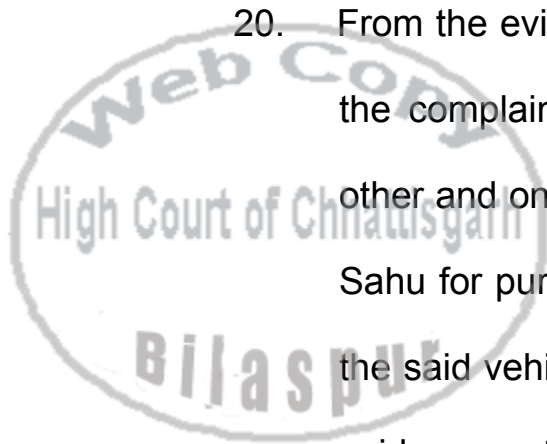


and 10 of her examination-in-chief were not available in the police statement (Ex.D-2). In para 12, she admitted that her husband and the appellants are old friends and they know each other since last 4 to 5 years. In para 13 she has admitted that she has not lodged missing report but she admitted that the sale amount of the truck was not paid to appellant Yogesh Sahu till date.

19. PW-6, Komal Kurre, who is witness of memorandum and seizure, has admitted that the money was kept by Gazi Khan and for that reason the accused have taken the complainant with them and before him, iron chain and lock were seized.

20. From the evidence of PW-7, Kailash Kumar Goenka, it is clear that the complainant and appellants were friends and known to each other and one Ghazi Khan has kept the money of appellant Yogesh Sahu for purchasing of his vehicle and with the help of Bhagwanta the said vehicle was sold to Ghazi Khan and he was not giving the said amount and Ghazi Khan has deposited Rs.2 lakhs in his account and he has informed to the appellants about the said fact.

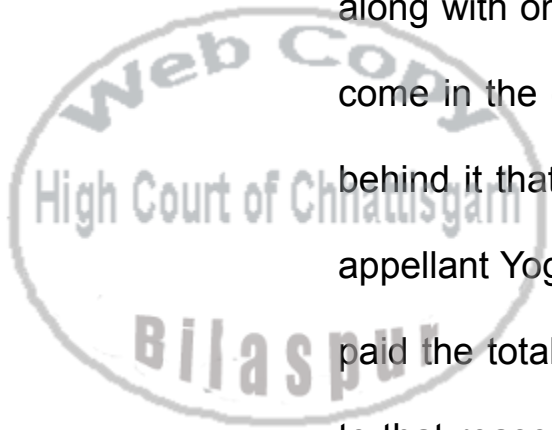
21. PW-8 Dr. TAMILASRAN M. has conducted the MLC of the complainant and as per MLC (Ex. P-12), all the injuries are simple in nature. As per his admission some injury can be caused by himself, but some could not be done, but he admitted that if the person travelling in vehicle and sleep down or fell down then all the injuries like the complainant would appear and he has admitted all the injuries can be caused by falling on the stone surface and he has admitted that if any person is tied with iron chain upto 2 or 3 days then certainly that person would sustain mark over wrist and swelling over the





wrist and legs may be possible. It is admitted that the complainant had no injury over the wrist and legs.

22. PW-9 Chetan dubey i.e Sub Inspector, who has conducted the investigation was confronted with the statement of the witnesses and he has fairly admitted what is stated by the witnesses in the FIR is there in the police statements and he admitted that there are several contradictions and omissions which are not stated by them before him that's why he has not written those statements.
23. From perusal of evidence of the complainant Bhagwanta Sahu, it transpires that there is no allegation that appellant Yogesh Sahu along with one co-accused have demanded any ransom and it has come in the evidence that they have detained him and the reason behind it that he has helped to sell the vehicle i.e. (Truck) of the appellant Yogesh Sahu to one Ghazi Khan and Ghazi khan has not paid the total amount to appellant Yogesh Sahu and therefore due to that reason appellant Yogesh Sahu along with other co-accused Narendra alias Nandu has detained him only to take his money back.
24. Upon consideration of evidence of Radha Sahu (PW-5), wife of the complainant Bhagwanta. it is clear enough that appellant Yogesh Sahu and her husband are friends and her husband has helped to sell the vehicle i.e. (Truck) of appellant Yogesh Sahu to one Ghazi khan and Ghazi khan has not paid the purchase amount to the appellant Yogesh Sahu and therefore due to that reason there is some dispute between appellant Yogesh Sahu and her husband, but it is not a case of ransom because the appellants have not





called her to pay ransom from her in lieu of leaving her husband and it is possible that her husband and the appellants have made planning to receive the rest of the amount of the truck from Gazi Khan.

25. On the basis of aforesaid analysis, we are of the considered opinion that the prosecution has failed to bring home the offence under Section 364A of the IPC against the appellants beyond reasonable doubt and learned trial Court has convicted the appellant for offence under Section 364A of the IPC by recording the finding which is wholly perverse to record.

26. Next question for consideration would be, whether the trial Court is justified in convicting the appellants for offence under Section 343 of the IPC ?

27. The appellants have been convicted for offence under Section 343 of the IPC, which is punishable for wrongful confinement for three or more days. Wrongful confinement has been defined under Section 340 of the IPC. Section 340 of the IPC defines “wrongful confinement” which states as under :-

“340. Wrongful confinement.—Whoever wrongfully restrains any person in such a manner as to prevent that person from proceedings beyond certain circumscribing limits, is said “wrongfully to confine” that person.”

28. Reverting to the facts of the present case in light of ingredients of offence under Section 340 of the IPC which is punishable under Section 343 of the IPC, it is evident that the complainant (PW-1) on the date of incident gone from his home of his own will with the



accused for showing them vehicle for purchase and he has travelled with them to so many crowded places but he neither resisted not tried to call anyone for his help. PW-4 Ved Vyas Sahu, driver of the vehicle in which complainant was alleged to be abducted, in para 4 of his evidence has admitted that he took them all three persons upto Chitrakot and after some distance on Highway all three persons taken meal and told him that we are willing to stay for 2-3 days there and they have requested him to stay with them, but he was not ready to stay there and then he left them near Jagdalpur and returned back and they have also not paid fare amount. In para 7, he has admitted that when he uses to travel with passengers he hear the conversation of the passengers and he fairly admitted that all three persons have told him that they are friends and used to talk outside of the vehicle. In para 11, he has admitted that all three persons were not having any luggage or anything and they were empty handed and they used to roam separately outside of the vehicle and use to come again in the vehicle. In para, 13 he admitted that the complainant was never tied by anything like chain or rope. In para 15, he admitted that his vehicle was booked by three persons to visit the tourist place and he admitted that all three persons along with him were free to move anywhere.

29. On consideration of the aforesaid evidence, it is evident that there is no evidence of wrongful confinement by the appellants. As such, we are of the considered opinion that the trial Court is absolutely unjustified in convicting the appellants for offence under Section

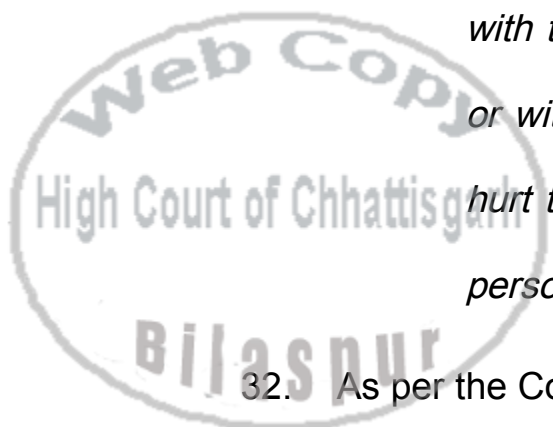


343 of the IPC.

30. Next question for consideration would be, whether the trial Court is justified in convicting the appellants for offence under Section 323/34 of the IPC ?
31. The appellants have also been convicted for offence under Section 323 of the IPC, which is punishable for voluntarily causing hurt. Voluntarily causing hurt has been defined under Section 321 of the IPC. Section 321 of the IPC defines “voluntarily causing hurt” which states as under :-

“321. Voluntarily causing hurt.—Whoever does any act with the intention of thereby causing hurt to any person, or with the knowledge that he is likely thereby to cause hurt to any person, and does thereby cause hurt to any person, is said “voluntarily to cause hurt”.

32. As per the Court evidence of complainant Bhagwanta Sahu (PW-1), accused have tied his hands and anklets with iron chain, due to which he sustained injuries and appellant Yogesh Sahu has also slapped him five to six times, but in the written complaint (Ex.P-1), he has alleged that he got injured on both his thighs due to assault on him in village Raveli. Both these statements are contradictory to each other. Dr. Tamilaran M. (PW-8) has conducted the MLC of the complainant and as per MLC (Ex. P-12) all the injuries are simple in nature and as per admission of this witness, some injury can be caused by himself, but some could not be done, but he admitted that if the person travelling in vehicle and slip down or fell down then all the injury like victim would appear and he has also



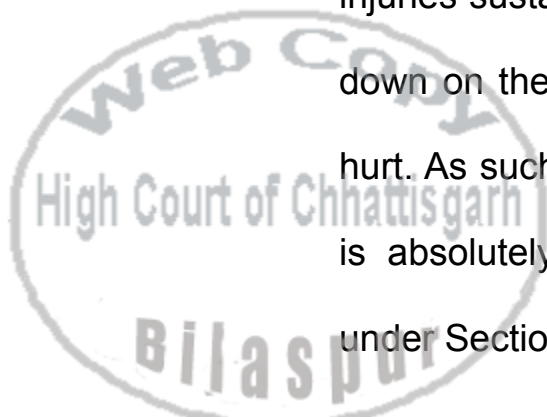


admitted all the injuries can be caused by falling on the stone surface and he has admitted that if any person is tied with iron chain upto 2 or 3 days then certainly that person would sustain mark over wrist and swelling over the wrist and legs may be possible. It is admitted that the complainant had no injury over the wrist and legs.

33. Considering aforesaid contradictory statement of the complainant himself and the fact that all the injuries sustained by him are simple in nature and also considering the fact the complainant had no injury over his writ and legs as alleged by him and the alleged injuries sustained by the victim can be caused due slip down or fell down on the vehicle, there is no ingredients of voluntarily causing hurt. As such, we are of the considered opinion that the trial Court is absolutely unjustified in convicting the appellants for offence under Section 323 of the IPC.

34. For the foregoing reasons, conviction and sentence of the appellants under Sections 364A, 343 and 323/34 of the IPC are liable to be set aside.

35. Consequently, the criminal appeal is **allowed**. Impugned judgment dated 25.05.2023 passed by the IX Additional Sessions Judge, Raipur, District – Raipur (C.G.) in Sessions Trial No. 226 of 2022 convicting and sentencing the appellants for the offence under Section 364A, 343 and 323/34 of the IPC is hereby set aside. The accused/appellants are acquitted of the charge under Sections 364A, 343 and 323/34 of the IPC levelled against them. They are in jail. They be released forthwith, if not required in any other case.





36. Keeping in view the provisions of Section 437-A CrPC, the accused-appellants, namely, **Yogesh Sah and Narendra @ Nandu Bomarde** are directed to forthwith furnish a personal bond each in terms of Form No.45 prescribed in the Code of Criminal Procedure to the satisfaction of the trial Court concerned with two reliable sureties which shall be effective for a period of six months along with an undertaking that in the event of filing of Special Leave Petition against the instant judgment or for grant of leave, the aforesaid appellants on receipt of notice thereof shall appear before the Hon'ble Supreme Court.

37. Let the trial Court records and copy of this judgment be sent to the trial court forthwith for necessary information and its compliance.

(Sachin Singh Rajput)
Judge

(Ramesh Sinha)
Chief Justice



Head-Note

No conviction can be made out under Section 364A of IPC unless it is proved by the prosecution that abduction was coupled with ransom demand and life threat.

आईपीसी की धारा 364 ए के तहत तब तक कोई दोषसिद्धि नहीं की जा सकती जब तक अभियोजन पक्ष यह साबित न कर दे कि अपहरण के साथ फिरौती की मांग और जान की धमकी भी शामिल थी।

