



2025:CGHC:33976-DB
AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 1790 of 2024

Amardas Mahant S/o Surti Das Mahant Aged About 23 Years R/o Village Nawapara, Police Station Kharsiya, District Raigarh, Chhattisgarh.

--- Appellant

Versus

State of Chhattisgarh Through Police Station Kharsiya, District Raigarh, Chhattisgarh.

--- Respondent

CRA No. 1869 of 2024

Sanjay Sidar S/o Shri Chhedi Lal Sidar Aged About 30 Years R/o - Village - Nawapara P.S. Kharsiya, District - Raigarh (C.G.)

---Appellant

Versus

State Of Chhattisgarh Through S.H.O. P.S. Kharsiya District - Raigarh (C.G.)

--- Respondent

CRA No. 235 of 2025

Khilawan Das Mahant Alias Nikhil S/o Itwari Aged About 30 Years R/o Village Sarwani, P.S.- Baradwar, District Janjgir-Champa, Chhattisgarh

---Appellant

Versus

State Of Chhattisgarh Through Police Station Kharsiya, District Raigarh, Chhattisgarh

--- Respondents

(Cause-title taken from Case Information System)

For Appellant (In CRA No.1790/2024)	:	Mr. Ishwar Jaiswal, Advocate
For Appellant (In CRA No.1869/2024)	:	Mr. Ravindra Sharma, Advocate
For Appellant (In CRA No.235/2025)	:	Mr. Chitendra Singh, Advocate
For State-Respondent	:	Mr. Shaleen Singh Baghel, Deputy Government Advocate

Hon'ble Shri Ramesh Sinha, Chief Justice

Hon'ble Shri Bibhu Datta Guru, Judge

Judgment on Board

Per Ramesh Singh, Chief Justice

18.07.2025

1. Since all these appeals are arising out of same crime number, same sessions trial, and by a common judgment, therefore, these appeals are have been clubbed together, heard together and decided by this common judgment.
2. It is an admitted fact that there were four accused persons, namely Khilawan Das Mahant alias Nikhil, Amardas Mahant, Sanjay Sidar and Pritam Das Mahant. By the impugned judgment dated 19.07.2024, accused Pritam Das Mahant has been acquitted for the charges levelled against him.
3. CRA No.1790/2024 has been filed by Amardas Mahant, CRA No.1869/2024 has been filed by Sanjay Sidar and CRA No.235/2025 has been filed by Khilawan Das Mahant alias Nikhil

against the judgment of conviction and order of sentence dated 19.07.2024 passed by learned 2nd Additional Sessions Judge Raigarh, District Raigarh, Chhattisgarh in Sessions Trial No.71/2021, whereby the appellants have been convicted and sentenced as under:

Appellant – Khilawan Das Mahant alias Nikhil

Conviction	Sentence
U/s 363 of IPC	Rigorous imprisonment for 07 years and fine amount of Rs.1,000/-, in default of payment of fine amount additional rigorous imprisonment for 03 months.
U/s 364-A/34 of IPC	Life imprisonment and fine amount of Rs.1,000/-, in default of payment of fine amount additional rigorous imprisonment for 03 months.
U/s 368/34 of IPC	Rigorous imprisonment for 07 years and fine amount of Rs.1,000/-, in default of payment of fine amount additional rigorous imprisonment for 03 months.
U/s 120B of IPC	Life imprisonment and fine amount of Rs.1,000/-, in default of payment of fine amount additional rigorous imprisonment for 03 months.
All the sentences were directed to run concurrently.	

Appellant – Amardas Mahant

Conviction	Sentence
U/s 363/34 of IPC	Rigorous imprisonment for 07

	years and fine amount of Rs.1,000/-, in default of payment of fine amount additional rigorous imprisonment for 03 months.
U/s 364-A/34 of IPC	Life imprisonment and fine amount of Rs.1,000/-, in default of payment of fine amount additional rigorous imprisonment for 03 months.
U/s 368/34 of IPC	Rigorous imprisonment for 07 years and fine amount of Rs.1,000/-, in default of payment of fine amount additional rigorous imprisonment for 03 months.
All the sentences were directed to run concurrently.	

Appellant – Sanjay Sidar

Conviction	Sentence
U/s 363/34 of IPC	Rigorous imprisonment for 07 years and fine amount of Rs.1,000/-, in default of payment of fine amount additional rigorous imprisonment for 03 months.
U/s 364-A/34 of IPC	Life imprisonment and fine amount of Rs.1,000/-, in default of payment of fine amount additional rigorous imprisonment for 03 months.
U/s 368/34 of IPC	Rigorous imprisonment for 07 years and fine amount of Rs.1,000/-, in default of payment of fine amount additional rigorous imprisonment for 03 months.
All the sentences were directed to run concurrently.	

4. The facts, as unfolded during the course of investigation and prosecution, are that the complainant Ramesh Kumar Agarwal, a resident of Chhapriganj, Kharsia, District Raigarh (C.G.), had earlier employed Khilawan Das Mahant alias Nikhil Kumar Mahant as a cook in his household. The services of the said accused had been discontinued on 18.02.2021 when his work was no longer required. On the date of the incident, i.e., 20.02.2021 at about 5:30 PM, accused Khilawan Das Mahant alias Nikhil Kumar Mahant visited the complainant's house under the pretext of retrieving a charger he had left behind in the upper room. After going upstairs, he came down and called the complainant's minor grandson, Shivansh Agarwal, aged about 6 years, enticing him with the offer of giving him chips. Under this pretext, the accused took the child away on his motorcycle, without informing or obtaining consent from the child's guardians. When both the accused and the child failed to return by 7:30 PM and repeated attempts to reach the accused on his mobile phone failed as the phone was switched off, the complainant grew apprehensive. Fearing that the accused had kidnapped the child for ransom or with some other malicious intent, he promptly lodged a written report at Police Station Kharsia. On the basis of the said report, an offence under Section 364-A of IPC was registered against the accused vide Crime No.104/2021. Investigation was set in motion accordingly. During the investigation, CCTV footage collected from the vicinity,

particularly from the shop of one Gopal Bansal, clearly showed the accused Khilawan Das Mahant taking the child away on a motorcycle. Further, the Call Detail Records (CDR) of the accused's mobile number 8349873283 revealed that the phone had been switched off following the incident. Investigation traced the location of a related mobile number 8210181369, belonging to co-accused Amardas, moving towards Jharsuguda in the neighboring state of Odisha.

5. Acting swiftly on this information, the police coordinated with authorities in the border regions of Chhattisgarh, Odisha, and Jharkhand, setting up checkpoints and blockades. The accused were eventually intercepted near Khunti Police Station, Jharkhand, while transporting the kidnapped child in an Ertiga vehicle bearing registration number CG-13-UE-7055. The child was found hidden between the seats, suggesting efforts to conceal him from detection. Upon search and seizure, incriminating articles such as a country-made pistol, plastic rope, a chemical substance in a bottle emitting a pungent smell, adhesive tape, packets of chips, biscuits, water bottles, and mobile phones were recovered from the possession of accused persons Khilawan Das Mahant, Amardas, and Sanjay Sidar. Further investigation led to the seizure of the motorcycle used in the kidnapping, which was found to belong to co-accused Pritam Das Mahant, the brother of Amardas. It was discovered that accused Pritam Das Mahant had removed and concealed the

number plate of the motorcycle in the house of one Manik Das at Banjari (Adbhar) to shield himself and others from legal consequences. His memorandum statement under Section 27 of the Evidence Act led to the recovery of the hidden number plate and the motorcycle itself. The investigation revealed that Khilawan Das Mahant, with the common intention to extort money through kidnapping for ransom, had conspired with accused Amardas, Sanjay Sidar, and Pritam Das Mahant to abduct the child. The conspiracy included a contingency to murder the child if their ransom demands failed.

6. After completion of the investigation, offences under Sections 363, 364-A, 368, 120-B, 201 of the IPC and Section 25 of the Arms Act were found to be established against the accused persons. Accordingly, a charge sheet bearing No. 208/2021 dated 16.05.2021 was filed before the Judicial Magistrate First Class, Kharsia, who committed the case to the Court of Sessions on 23.08.2021, the offences being exclusively triable by a Sessions Court.
7. Statement of the witnesses under Section 161 of Cr.P.C. have been recorded and statement of the victim under Section 164 of Cr.P.C. has also been recorded and after completion of usual investigation charge-sheet was filed against the appellants for the offence under Sections 364-A, 368, 120B, 201, 34 of IPC before the learned Judicial Magistrate First Class, Kharsia, District

Raigarh (C.G.). The case was committed to the Court of learned Sessions Judge, Raigarh from where it has been transferred to the learned trial Court for its trial.

8. The learned trial Court has framed charge against the appellant-Khilawan Das Mahant alias Nikhil for the offence under Sections 363, 364-A/34, 368/34 and 120-B of IPC and against the appellants-Amardas Mahant and Sanjay Sidar for the offence under Sections 363/34, 364-A/34 and 368/34 of IPC. They denied the charges and claimed trial.
9. In order to prove the charge against the appellants, the prosecution has examined as many as 23 witnesses as PW-1 to PW-23 and exhibited 45 documents as Ex.P/1 to Ex.P/45. Statement of the appellants under Section 313 of Cr.P.C. have also been recorded, in which they denied the circumstance appears against them, plead innocence and have submitted that they have been falsely implicated in the offence.
10. After appreciation of oral as well as documentary evidence led by the prosecution, the learned trial Court has convicted and sentenced the appellants as mentioned in the earlier part of this judgment. Hence this appeal.
11. Mr. Ishwar Jaiswal, Mr. Ravindra Sharma and Mr. Chitendra Singh, learned counsel appearing for the respective appellants would submit that the prosecution has failed to prove its case beyond reasonable doubt. There are material omissions and

contradictions in the evidence of prosecution witnesses which cannot be made basis for conviction of the appellants in the alleged offence in question. They would submit that there is no sufficient evidence on record that the victim boy was recovered from the possession of the present appellants. There is no test identification parade conducted by the prosecution to identify the actual culprit. There is also no evidence with respect to any ransom call made by the present appellants. The material witnesses have not supported the prosecution case. They would further submits that the ingredients of Section 364-A and 120B of IPC is missing in the case, therefore, there is lack of cogent and clinching evidence against the appellants and the appellant are entitled for acquittal.

- 12.** Per contra, Mr. Shaleen Singh Baghel, learned Deputy Government Advocate opposes the submissions made by learned counsel for the appellants and submitted that the prosecution has proved its case beyond reasonable doubt against the appellants. But for minor omissions and contradictions the evidence of prosecution witnesses are fully reliable. The victim (PW-14) has duly supported the case of the prosecution. When the victim himself has supported and identify the person who have kidnapped him and his evidence is reliable, the same is not required to be corroboration from other evidence. The victim boy was recovered from the vehicle in which the appellants have to kidnapped him, therefore, there is sufficient

evidence available on record and the learned trial Court after considering the evidence available on record, rightly convicted the appellants for the offence in question and their appeals are liable to be dismissed.

13. We have heard learned counsel for the parties, considered their rival submissions and perused the record of the case with utmost circumspection.
14. PW-9 Doman Tudu, Assistant Sub-Inspector posted at Khunti Police Station, Jharkhand, has corroborated the prosecution's case regarding the recovery of the kidnapped child and apprehension of the accused persons. He deposed that on 20.02.2021 at around 10:00 PM, while he was on patrolling duty along with three IRB jawans, he received information from the Police Station at around 11:30 PM that a child from Chhattisgarh State had been kidnapped and was being transported through their jurisdiction. Pursuant to this information, he set up a vehicle checking blockade at about 11:45 PM and was instructed specifically to inspect vehicles coming from Chhattisgarh. He also received the photograph of the kidnapped child on WhatsApp to assist in identification during the search operation. At about midnight, he noticed an Ertiga vehicle bearing registration number CG-13-UE-7055 approaching. When he signaled the driver to stop, the vehicle did not comply, which raised his suspicion. He and his team chased the vehicle and managed to

stop it near Gayatri Nagar, Khunti. Upon search, he found three men inside the vehicle. Under the middle seat, concealed under a blanket, they recovered the kidnapped child. He verified the child's identity with the photograph sent to him and confirmed it was the same child, Shivansh Agarwal. He clearly stated that accused Pritam Das Mahant was not present in the said vehicle at the time of the recovery. The names of the three apprehended accused — Khilawan Das Mahant alias Nikhil Kumar Mahant, Amardas Mahant, and Sanjay Sidar were disclosed to him by the accused themselves at the spot.

- 15.** In cross-examination, he denied all suggestions of the defence that the vehicle was not seized, that he was not on patrol, or that the accused were not present in the Ertiga vehicle. He firmly maintained that the vehicle was seized in his presence and the child was recovered from it. He admitted that neither he nor his station in-charge recorded statements of the accused but stated the entire incident was duly noted in the station diary. He confirmed the colour of the vehicle as white and rejected the suggestion that he was not on patrol duty or that no such seizure took place. Thus, the testimony of PW-9 Doman Tudu proves the crucial fact that accused Khilawan Das, Amardas, and Sanjay Sidar were caught transporting the kidnapped child in the Ertiga vehicle towards Jharkhand. His evidence remains unshaken on material particulars in cross-examination and inspires confidence.

- 16.** Vivek Patel (PW-12) Inspector, has stated in his evidence that on the instructions of the Superintendent of Police, Raigarh, a special team was constituted for tracing the kidnapped child Shivansh Agarwal. Acting on the said instructions, the witness and his team proceeded towards Orissa in search of the child. While en route, he received information from his senior officer that the kidnapped child Shivansh and three accused persons had already been apprehended by Khunti Police, Jharkhand during a vehicle checking operation. Accordingly, PW-12 and his team diverted their journey and reached Khunti Police Station, Jharkhand on 21.02.2021 in the morning. Upon reaching the police station, he met the Station House Officer and found that the kidnapped child Shivansh along with three accused persons were present in the custody of Khunti Police. In the presence of witnesses, he identified and took custody of the kidnapped child, prepared the Panchnama (Exhibit P-14) and verified his signature thereon. PW-12 further deposed that upon his inquiry, both the Khunti police personnel and the child himself confirmed that the three accused had been apprehended while they were transporting the kidnapped child in a white-coloured Ertiga vehicle.
- 17.** In cross-examination, Vivek Patle (PW-12) denied the defence suggestion that when he reached Khunti Police Station, the accused persons were not present there. However, he admitted that formal arrest of the accused was not effected at Khunti

Police Station. Nonetheless, the evidence of this witness clearly establishes that upon receiving information of the recovery, he visited Khunti Police Station, verified the recovery of the kidnapped child and the presence of the accused persons, and prepared the recovery proceedings.

18. The victim child namely Shivansh Agrawal, aged about 7 years was also examined on his competence to testify and was found fit to give evidence. His deposition is of great significance to the case as he is the direct victim and eyewitness. In his evidence, he stated that about one or two years ago, while he was at home, accused Nikhil (Khilawan Das Mahant), who used to work as a cook in his house, came and took him to Sanskar Bakery on the pretext of buying him chips. The accused purchased him chips and thereafter, under the pretext of feeding him patties, took him away further in a car towards Khunti. The witness further stated that apart from accused Nikhil, there were two other persons present in the vehicle. Though he did not know their names, he identified them in court by pointing at them. Upon Court's direction, the two accused disclosed their names as Amar Das and Sanjay Sidar.

19. In his cross-examination:

- The child confirmed that he knew accused Nikhil because the latter had worked as a cook at his house.
- He stated that the other two accused had not come to his house earlier and were strangers to him before the incident.

- He reaffirmed that accused Nikhil took him to buy chips on a motorcycle around 5:00 PM.
- He denied the defence suggestions that Nikhil had not taken him for chips or had not taken him to Khunti.
- He clearly denied the suggestion that the other two accused were not with Nikhil during the incident.

20. Thus, from the evidence of PW-14 Shivansh Agarwal, it is clearly established that accused Nikhil lured the child under the pretext of purchasing chips, took him on a motorcycle, and thereafter transported him along with co-accused Amar Das and Sanjay Sidar in a vehicle towards Khunti. This evidence not only corroborates the prosecution's case but also aligns with the testimonies of PW-09 Doman Tudu and PW-12 Inspector Vivek Patel regarding the manner of kidnapping and the recovery of the child.

21. In the present case, to establish the initial link of the kidnapping incident, the prosecution has examined the close family members of the kidnapped child Shivansh Agarwal, namely Ramesh Kumar Agarwal (PW-01), Sarita Devi Agarwal (PW-03), and Rahul Agarwal (PW-02), along with Raju Agarwal (PW-07), a shopkeeper who had direct interaction with the accused and the victim on the date of the incident.

22. Ramesh Kumar Agarwal (PW-01), the grandfather of the kidnapped child, deposed that the accused Nikhil Das Mahant was employed in his house for kitchen work but had been dismissed on 18.02.2021 after settlement of accounts. On

20.02.2021, accused Nikhil contacted him, stating that he had left his mobile charger at the house and wished to collect it. Permission was granted. Upon his visit, Nikhil went to the upper room, retrieved the charger, and while leaving, took the child Shivansh along on the pretext of buying chips. When Shivansh did not return within 1-2 hours, search efforts revealed that Nikhil had taken Shivansh on a motorcycle. Consequently, Ramesh Kumar Agarwal lodged a written report (Ex.P-01), upon which FIR (Ex.P-02) was registered. The police visited the scene and prepared a spot map.

- 23.** Smt. Sarita Devi Agarwal (PW-3) corroborates her husband's testimony. She confirmed that on 20.02.2021, accused Nikhil called regarding the charger. Around 5:30 pm, Nikhil arrived at the house, retrieved the charger, and took Shivansh along to buy chips, despite her objections. When they did not return within half an hour, she inquired within the colony, and failing to locate them, informed her husband and elder son. This sequence of events led to the lodging of the police report.
- 24.** Rahul Agrawa; (PW-2), the father of the kidnapped child, stated that on 20.02.2021, he was in Raigarh for work. He was informed by his wife over the phone that Nikhil had taken Shivansh on the pretext of buying chips but had not returned. Initially, he advised patience, but upon receiving another call, he returned to Kharsia. He conducted inquiries at Shivansh's friends' houses and learned

from a shopkeeper that Shivansh had come with accused Nikhil to buy chips. Furthermore, Nikhil was heard stating that he was going to the village. Rahul Agarwal also visited Nikhil's rented room, which was found locked.

25. Raju Agrawal (PW-07), a shopkeeper, testified that accused Khilawan (identified as one of the accused) brought Shivansh to his shop on the incident date and purchased chocolates, chips, and Kurkure. Approximately one and a half hours later, Shivansh's family members came enquiring about him. He informed them that Shivansh had indeed visited with the accused. His statement remained unchallenged in cross-examination.

26. From the evidence came on record, it cannot be said that the appellants have not kidnapped the victim boy and kept him away from his lawful guardianship. The kidnapping is defined in Section 361 of IPC and punishment is defined under Section 363 of IPC which reads as under:

“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 lawful custody of such child, unless such act is committed for an immoral or unlawful purpose.

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."*

27. From the definition given in Section 361 of IPC, it is amply clear that if any person takes any minor under 16 years of age out of keeping of the lawful guardian of such minor without the consent of such guardian is said to kidnap such minor from lawful guardianship. In the present case although he is one of his relative in presence of his parents, the appellant cannot be considered to be the guardian of the minor victim and when he forcefully took him without any consent of her guardian/parents, the appellant is definitely guilty for the offence of kidnapping as provided under Section 361 of IPC.
28. So far as the kidnapping for ransom is concerned, the offence is defined under Section 364-A of the IPC, which reads as under:

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

29. In the matter of ***Shaik Ahmed vs. State of Telangana 2021 (9) SCC 59***, the Hon'ble Supreme Court has considered the pre-requisite of Section 364-A which has to be satisfy before convicting the accused for the offence and held in Para 9 to 33 and 41, 42 that:-

“9. The Law Commission of India took up the revision of Indian Penal Code and submitted its report, i.e., 42nd Report (June, 1971). In Chapter 16, offences affecting the human body was dealt with. The chapter on kidnapping and abduction was dealt by the Commission in paragraphs 16.91 to 16.112. Section 364 and 364A was dealt by the Commission in paragraphs 16.99 to 16.100 which are as follows:-

“16.99. Section 364-Amendments proposed.- *punishes the offence of kidnapping or abduction of a person in order to*

murder him, the maximum punishment being imprisonment for life or for ten years. In view of our general recommendation as to imprisonment for life, we propose that life imprisonment should be omitted and term imprisonment increased to 14 years. The illustrations to the section do not elucidate any particular ingredient of the offence and should be omitted.

16.100. Section 364-A-Kidnapping or abduction for ransom- *We consider it desirable to have a specific section to punish severely kidnapping or abduction for ransom, as such cases are increasing. At present, such kidnapping or abduction is punishable under section 365 since the kidnapped or abducted person will be secretly and wrongfully confined.*

We also considered the question whether a provision for reduced punishment in case of release of the person kidnapped without harm should be inserted, but we have come to the conclusion that there is no need for it. We propose the following section:-

“364-A. Kidnapping or abduction for ransom .—*Whoever kidnaps or abducts any person with intent to hold that person for ransom shall be punished with rigorous imprisonment for a term which may extend to 14 years, and shall also be liable to fine.”*

10. *Although the Law Commission has in paragraph 16.100 proposed Section 364A, which only stated*

that whoever kidnaps or abducts any person with intent to hold that person for ransom be punished for a term which may extend to 14 years. Parliament while inserting Section 364A by Act No.42 of 1993 enacted the provision in a broader manner also to include kidnapping and abduction to compel the Government to do or abstain from doing any act or to pay a ransom which was further amended and amplified by Act No.24 of 1995.

11. *Section 364A as it exists after amendment is as follows:-*

“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. *We may now look into section 364A to find out as to what ingredients the Section itself contemplate for the offence. When we paraphrase Section 364A 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 fine.”

The first essential condition as incorporated in Section 364A 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 fulfill 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 364A contains a heading "kidnapping for ransom, etc." The kidnapping by a person to demand ransom is fully covered by Section 364A.

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 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 364A 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 364A, apart from fulfillment 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".*

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:-*

".....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.”

16. We may also notice certain judgments of this court where conjunction “and” has been used. In Punjab Produce and Trading Co. Ltd. Vs. The CIT, West Bengal, Calcutta (1971) 2 SCC 540, this Court had occasion to consider Section 23-A Explanation b(iii) of Income Tax Act, 1922 which provision has been extracted in paragraph 5 of the judgment which is to the following effect:-

“Explanation. — For the purposes of this section a company shall be deemed to be a company in which the public are substantially interested—

(a) If it is a company owned by the Government or in which not less than forty per cent of the shares are held by the Government.

(b) If it is not a private company as defined in the Indian Companies Act, 1913 (7 of 1913) and—

(i) its shares (not being shares entitled to a fixed rate of dividend, whether with or without a further right to participate in profits) carrying not less than fifty per cent of the voting power have been allotted unconditionally to, or acquired unconditionally by, and were throughout the previous year beneficially held by the public (not including a company to which the provisions of this section apply):

Provided that in the case of any such company as is referred to in sub-section (4),

this sub-clause shall apply as if for the words 'not less than fifty per cent' the words 'not less than forty per cent', had been substituted;

(ii) the said shares were at any time during the previous year the subject of dealing in any recognised stock exchange in India or were freely transferable by the holder to other members of the public; and

(iii) the affairs of the company or the shares carrying more than fifty per cent of the total voting power were at no time during the previous year controlled or held by less than six persons (persons who are related to one another as husband, wife, lineal ascendant or descendant or brother or sister, as the case may be, being treated as a single person and persons who are nominees of another person together with that other person being likewise treated as a single person:

Provided that in the case of any such company as is referred to in sub-section (4), this clause shall apply as if for the words 'more than fifty per cent', the words 'more than sixty per cent', had been substituted."

17. This Court held following in paragraph 8:-

"8.The clear import of the opening part of clause (b) with the word "and" appearing there read with the negative or disqualifying conditions in sub-clause (b)(iii) is that the assessee was bound to satisfy apart from the conditions contained in the other sub-

clauses that its affairs were at no time during the previous year controlled by less than six persons and shares carrying more than 50 per cent of the total voting power were during the same period not held by less than six persons.....”

18. *In another judgment, Hyderabad Asbestos Cement Products and Anr. Vs. Union of India, (2000) 1 SCC 426, this Court had occasion to consider Rule 56-A of Central Excise Act, 1944. The Court dealt with interpretation of conjunctive and disjunctive “and”, “or”. Proviso to Rule 56-A also uses the conjunctive word “and”. The Provision of the Rule as quoted in paragraph 4 is as below:-*

“56-A. Special procedure for movement of duty-paid materials or component parts for use in the manufacture of finished excisable goods.—(1) *Notwithstanding anything contained in these rules, the Central Government may, by notification in the Official Gazette, specify the excisable goods in respect of which the procedure laid down in sub-rule (2) shall apply. (2) The Collector may, on application made in this behalf and subject to the conditions mentioned in sub-rule (3) and such other conditions as may, from time to time, be prescribed by the Central Government, permit a manufacturer of any excisable goods specified under sub-rule (1) to receive material or component parts or finished products (like asbestos cement), on which the duty of excise or the additional duty under Section 2-A of the*

Indian Tariff Act, 1934 (32 of 1934), (hereinafter referred to as the countervailing duty), has been paid, in his factory for the manufacture of these goods or for the more convenient distribution of finished product and allow a credit of the duty already paid on such material or component parts or finished product, as the case may be: .

Provided that no credit of duty shall be allowed in respect of any material or component parts used in the manufacture of finished excisable goods—

(i) if such finished excisable goods produced by the manufacturer are exempt from the whole of the duty of excise leviable thereon or are chargeable to nil rate of duty, and

(ii) unless—

(a) duty has been paid for such material or component parts under the same item or sub-item as the finished excisable goods; or

(b) remission or adjustment of duty paid for such material or component parts has been specifically sanctioned by the Central Government:

Provided further that if the duty paid on such material or component parts (of which credit has been allowed under this sub-rule) be varied subsequently due to any reason, resulting in payment of refund to, or recovery of more duty from, the manufacturer or

importer, as the case may be, of such material or component parts, the credit allowed shall be varied accordingly by adjustment in the credit account maintained under sub-rule (3) or in the account- current maintained under sub-rule (3) or Rule 9 or Rule 178(1) or, if such adjustment be not possible for any reason, by cash recovery from or, as the case may be, refund to the manufacturer availing of the procedure contained in this rule.”

19. *This court held that when the provisos 1 & 2 are separated by conjunctive word “and”, they have to be read conjointly. The requirement of both the proviso has to be satisfied to avail the benefit. Paragraph 8 is as follows:-*

“8. The language of the rule is plain and simple. It does not admit of any doubt in interpretation. Provisos (i) and (ii) are separated by the use of the conjunction “and”. They have to be read conjointly. The requirement of both the provisos has to be satisfied to avail the benefit. Clauses (a) and (b) of proviso (ii) are separated by the use of an “or” and there the availability of one of the two alternatives would suffice. Inasmuch as cement and asbestos fibre used by the appellants in the manufacture of their finished excisable goods are liable to duty under different tariff items, the benefit of pro forma credit extended by Rule 56-A cannot be availed of by the appellants and has been rightly denied by the authorities of the

Department.”

20. *Thus, applying the above principle of interpretation on condition Nos. 1 & 2 of Section 364A which is added with conjunction “and”, we are of the view that condition No.2 has also to be fulfilled before ingredients of Section 364A are found to be established. Section 364A also indicates that in case the condition “and threatens to cause death or hurt to such person” is not proved, there are other classes which begins with word “or”, those conditions, if proved, the offence will be established. The second condition, thus, as noted above is divided in two parts- (a) and 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.*

21. *Now, we may look into few cases of this Court where different ingredients of Section 364A came for consideration. We may first notice the judgment of this Court in Malleshi Vs. State of Karnataka, (2004) 8 SCC 95. The above was a case where kidnapping of a major boy was made by the accused for ransom and before this Court argument was raised that demand of ransom has not been established. In the above case, the Court referred to Section 364A and in paragraph 12 following was observed:-*

“12. To attract the provisions of Section 364-A what is required to be proved is: (1) that the accused kidnapped or abducted the person; (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. State (NCT of Delhi) [2001 Cri LJ 1669 (Del)] to contend that since the ransom demand was not conveyed to the father of PW 2, the intention to demand was not fulfilled.”

22. *This court in paragraphs 13 to 15 dealt with demand for ransom and held that demand originally was made to 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 meantime does not take away the effect of conditions of Section 364A. In the above case, this Court was merely concerned with ransom, hence, other conditions of Section 364A were not noticed.*

23. *The next judgment is Anil alias Raju Namdev Patil Vs. Administration of Daman & Diu, Daman and Another, (2006) 13 SCC 36. In the above case, this Court noticed the ingredients for commission of offence under Section 364 and 364A. Following was laid down in paragraph 55:-*

“55.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 intergovernmental organisation or any other person to do or abstain from doing any act or to pay a ransom.”

24. *At this stage, we may also notice the judgment of this Court in Suman Sood alias Kamaljeet Kaur Vs. State of Rajasthan (2007) 5 SCC 634. In the above case, Suman Sood and her husband Daya Singh Lahoria were accused in the case of abduction. They were tried for offence under Section 364A, 365, 343 read with Section 120-B and 346 read with Section 120-B. The trial court convicted the appellant for offence under Sections 365 read with 120-B, 343 read with 120-B and 346 read with 120-B. She was, however, acquitted for offence punishable under Section 364-A. Her challenge against conviction and sentence for offences punishable under Sections 365 read with 120-B, 343 read with 120-B and 346 read with 120-B IPC was negated by the High Court. But her acquittal for offences punishable under Sections 364-A read with 120-B was set aside by the High Court in an appeal and she was also convicted for the offence under Section 364A and was sentenced to life imprisonment. In the appeal filed by her challenging her conviction under Section 364A, this Court dealt with acquittal of Suman Sood under Section 364A by trial Court. In Paragraph 64 this court noticed as follows:-*

“64. According to the trial court, the prosecution had failed to prove charges against Suman Sood for an offence punishable under Sections 364-A or 364-A read with 120-B IPC “beyond reasonable doubt” inasmuch as

no reliable evidence had been placed on record from which it could be said to have been established that Suman Sood was also a part of “pressurise tactics” or had terrorised the victim or his family members to get Devendra Pal Singh Bhullar released in lieu of Rajendra Mirdha. The trial court, therefore, held that she was entitled to benefit of doubt.”

25. *The findings of trial court that no reliable evidence had been placed on record from which it could be said to have been established that Suman Sood was also a part of pressurise tactics or has terrorized the victim or his family. This court approved the acquittal of Suman Sood by trial court and set aside the order of the High Court convicting Suman Sood. In paragraph 71 following was held by this Court:-*

“71. On the facts and in the circumstances in its entirety and considering the evidence as a whole, it cannot be said that by acquitting Suman Sood for offences punishable under Sections 364-A read with 120-B IPC, the trial court had acted illegally or unlawfully. The High Court, therefore, ought not to have set aside the finding of acquittal of accused Suman Sood for an offence under Sections 364-A read with 120-B IPC. To that extent, therefore, the order of conviction and sentence recorded by the High Court deserves to be set aside.”

26. *Thus, the trial court’s findings that there was no evidence that Suman Sood was part of pressurize tactics or terrorized the victim or his family members,*

hence, due to non-fulfillment of the condition as enumerated in Section 364A, the trial court recorded the acquittal, which has been confirmed by this Court. The above case clearly establishes that unless all conditions as enumerated in Section 364A are fulfilled, no conviction can be recorded.

27. Now, we come to next judgment, i.e., Vishwanath Gupta Vs. State of Uttaranchal (2007) 11 SCC 633. In the above case, the victims were abducted from district of Lucknow, State of U.P. demands for ransom and threat was extended from another district, i.e., Nainital and the victim was done to death in another district, i.e., Unnao in the State of U.P. This Court had occasion to consider the ingredients of Section 364A and in paragraphs 8 and 9, the following was laid down:-

“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.

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 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. In the present case the demand of the money with the threat perception had been made at (Haldwani) Nainital. The deceased were kidnapped at Lucknow and they were put to death at Unnao. Therefore, the first offence was committed by the accused when they abducted Ravi Varshney and Anoop Samant at Lucknow. Therefore, Lucknow court could have territorial jurisdiction to try the case.”

28. *This Court in the above case, laid down that there are three stages in the Section, one is kidnapping or abduction, second is threat of death coupled with demand of money and third when the demand is not met, then causing death. The Court held that if the three ingredients are available that will constitute the offence under Section 364 of the IPC. Dealing with Section 364A in context of above case, following was laid down in paragraph 17:-*

“17.But here, in the case of Section 364-A something more is there, that is, that a person was abducted from Lucknow and demand has been raised at Haldwani, Nainital

with threat. If the amount is not paid to the abductor then the victim is likely to be put to death. In order to constitute an offence under Section 364-A, all the ingredients have not taken place at Lucknow or Unnao. The two incidents took place in the State of Uttar Pradesh, that is, abduction and death of the victims but one of the ingredient took place, that is, threat was given at the house of the victims at Haldwani, Nainital demanding the ransom money otherwise the victim will be put to death. Therefore, one of the ingredients has taken place within the territorial jurisdiction of Haldwani, Nainital. Therefore, it is a case wherein the offence has taken place at three places i.e. at Haldwani, Nainital, where the threat to the life of the victim was given and demand of money was raised, the victim was abducted from Lucknow and he was ultimately put to death at Unnao.”

29. Next case which needs to be noticed is a Three Judge Bench Judgment of this Court in *Vikram Singh alias Vicky and Anr. Vs. Union of India and Ors.*, (2015) 9 SCC 502. In the above case, this Court elaborately considered the scope and purport of Section 364A including the historical background. After noticing the earlier cases, this Court laid down that section 364A has three distinct components. In Paragraph 25, following was laid down with regard to distinct components of Section 364A:-

“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.....”

30. *We may also notice one more Three Judge Bench Judgment of this Court in Arvind Singh Vs. State of Maharashtra, (2020) SCC Online SC 400. In the above case, an eight year old son of Doctor Mukesh Ramanlal Chandak (PW1) was kidnapped by the accused A1 and A2. Accused A1 was an employee of Dr. Chandak. It was held that A1 had grievance against Dr. Chandak. A2 who accompanied A1 when the boy was kidnapped and after the kidnapping of the boy it was found that boy was murdered and at the instance of A1, the dead body was recovered from a bridge constructed over a Rivulet. Trial court had sentenced both A1 and A2 to death for the offences punishable under Sections 364A read with 34 and 302 read with 34. The High Court had dismissed the appeal affirming the death sentence. On behalf of A2, one of the arguments raised before this Court was that although child was kidnapped for ransom but there was no intention to take the life of the child, therefore, offence under Section 364A is not made out. This Court noticed the ingredients of Section 364A, one of which was*

“threatening to cause death or hurt” in paragraphs 90, 91 and 92, the following was observed:-

“92. An argument was raised that the child was kidnapped for ransom but there was no intention to take life of the child, therefore, an offence under Section 364A is not made out. To appreciate the arguments, Section 364A of the IPC is reproduced as under:

“364-A. Kidnapping for ransom, etc.—
Whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction and threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt, or causes hurt or death to such person in order to compel the Government or any foreign State or international intergovernmental 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.”

93. Section 364A IPC has three ingredients relevant to the present appeals, one, the fact of kidnapping or abduction, second, threatening to cause death or hurt, and last, the conduct giving rise to reasonable apprehension that such person may be put to death or hurt.

94. The kidnapping of an 8-year-old child was unequivocally for ransom. The kidnapping of a

victim of such a tender age for ransom has inherent threat to cause death as that alone will force the relatives of such victim to pay ransom. Since the act of kidnapping of a child for ransom has inherent threat to cause death, therefore, the accused have been rightly been convicted for an offence under Section 364A read with Section 34 IPC. The threat will remain a mere threat, if the victim returns unhurt. In the present case, the victim has been done to death. The threat had become a reality. There is no reason to take different view that the view taken by learned Sessions Judge as well by the High Court.”

31. *We need to refer to observations made by Three Judge Bench in paragraph 92 where this Court observed that kidnapping of an eight year old victim for ransom has inherent threat to cause death as it alone will force the relatives of victim to pay ransom. The Court further held that since the act of kidnapping of a child has inherent threat to cause death, therefore, the accused have been rightly convicted for an offence under Section 364A read with Section 34 IPC. In the next sentence, the Court held that the threat will remain a mere threat, if the victim returns unhurt, “the victim has been done to death the threat has become a reality”.*

32. *The above observation made by Three Judge Bench has to be read in context of the facts of the case which was for consideration before this Court. No ratio has been laid down in paragraph 92 that when an eight year old child (or a child of a tender*

age) is kidnapped/abducted for ransom there is inherent threat to cause death and the second condition as noted above, i.e., threatens to cause death or hurt to such person, is not to be proved. The observations cannot be read to mean that in a case of kidnapping or abduction of an eight year old child (or child of a tender age), presumption in law shall arise that kidnapping or abduction has been done to cause hurt or death. Each case has to be decided on its own facts. In the foregoing paragraphs, we have noticed that all the three distinct conditions enumerated in Section 364A have to be fulfilled before an accused is convicted of offence under Section 364A. Thus, the observations in paragraph 92 may not be read to obviate the establishment of second condition as noticed above for bringing home the offence under Section 364A.

33. *After noticing the statutory provision of Section 364A 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 364A which are required to be proved by prosecution are as follows:-*

(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;

(iii) causes hurt or death to such person in

order to compel the Government or any foreign State or any Governmental organization 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 addition to first condition either condition (ii) or (iii) has to be proved, failing which conviction under Section 364A cannot be sustained.”

41. *Now, coming to the second part of the condition No.2, i.e., “or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt”. Neither there is any such conduct of the accused discussed by the Courts below, which may give a reasonable apprehension that victim may be put to death or hurt nor there is anything in the evidence on the basis of which it can be held that second part of the condition is fulfilled. We, thus, are of the view that evidence on record did not prove fulfillment of the second condition of Section 364A. Second condition is also a condition precedent, which is requisite to be satisfied to attract Section 364A of the IPC.*

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 364A IPC. We, thus, set aside the conviction of the appellant under Section 364A. However, from the evidence on record regarding kidnapping, it is proved that accused had kidnapped the victim for*

ransom, demand of ransom was also proved. Even though offence under Section 364A 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 paragraphs 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. "

30. In the matter of ***Ravi Dhingra vs. State of Haryana*** reported in **2023 (6) SCC 76** that the prosecution must prove beyond reasonable doubt that the act of kidnapping should have been coupled with demand and ransom with the threat to life of a person who has been kidnapped, the Hon'ble Supreme Court in para 23, 24 and 25 has held as under:

"23. This Court, notably in Anil vs. Administration of Daman & Diu, (2006) 13 SCC 36 ("Anil"), Vishwanath Gupta vs. State of Uttaranchal (2007) 11 SCC 633 ("Vishwanaths 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:

23.1. 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:

“54. The propositions of law which can be culled out from the aforementioned judgments are:

(i) The appellant should not suffer any prejudice by reason of misjoinder of charges.

(ii) A conviction for lesser offence is permissible.

(iii) It should not result in failure of justice.

(iv) If there is a substantial compliance, misjoinder of charges may not be fatal and such misjoinder must be arising out of mere 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 organization or any other person to do or abstain from doing any act or to pay a ransom.

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.”

23.2. 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.

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 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.”

23.3. 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.”

It is necessary to prove not only that such kidnapping or abetment 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.

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

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 iii. when the demand is not met, then causing death.

25. *The relevant portions of the said judgement are extracted 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 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 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.

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 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”.

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:

“... 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.”

x

x

x

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:

(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;

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

31. In the matter of **Rajesh and Another vs. State of Madhya Pradesh** reported in **2023 (15) SCC, 521**, the Hon'ble Supreme Court held that there should be the evidence placed on record to establish the demand of ransom. The Hon'ble Supreme Court in para 45, 46 and 47 has held as under:

“45. The proverbial last nails in the coffin of the prosecution’s case, if at all needed, are the shocking lapses and the slipshod investigation on the part of the police. It is on record that when the Investigating Officer (PW-16) undertook the first search of Om Prakash Yadav’s house under Ex. P-37 Panchnama, nothing was found. However, a later search with the aid of Brijesh Yadav led to the seizure of two mobile phones from a trunk in one of the rooms of Om Prakash Yadav’s house. As to why these phones were not found during the first search is not explained. That apart, Shaival @ Bambam (PW-9), a witness to the seizure of the phones, claimed that there were no SIM cards in the mobiles but candidly admitted that they did not open the mobiles and look inside. He said that they did not try to operate the mobiles or see the numbers inside and that both the phones were turned off. The self-contradictory deposition of this witness does not aid the dubious investigative process adopted by the police.

46. As regards the call data and the ransom calls, we may note that Santosh Jadhav, Assistant Nodal Officer, Reliance Communication, was examined as PW-17 and spoke of the call data of mobile number 8305620342 from which the ransom calls were made. According to him, the SIM card with the said mobile number was given to one Bhuraji, son of Deepu, whose address was House No. 433, Sanjay Gandhi Ward, Tehsil Jabalpur. He produced Bhuraji’s ‘Customer Application Form’ along with his attached Election ID card. These documents were marked as Ex. D6. The call data of 28.03.2013 showed that this SIM card was used on the mobile handset with IMEI

No. 358327028551270. He marked in evidence Ex. P35 in that regard. Therefore, the mobile number from which ransom calls were made was in the name of one Bhuraji, s/o Deepu, and his address was available. However, the police did not even attempt to contact Bhuraji or examine him to find out how and why his SIM card was used for making the ransom calls.

47. Even more startling is the fact that, though PW-17 placed on record actual proof of the allotment of this mobile number to Bhuraji (Ex. D6), no such steps were taken by the police to establish the link between Om Prakash Yadav and mobile number 9993135127, which was attributed to him. PW-15 baldly stated that the said mobile number was allotted to Om Prakash Yadav but did not mark in evidence any document in proof thereof. Surprisingly, he had stated in his deposition that he had brought the certified copy of the application form and the ID used when this SIM card was allotted to the subscriber, Om Prakash Yadav, but the same were not marked. In effect, no palpable connection is established between the said mobile number and Om Prakash Yadav. In the absence of such a tangible link, the call data report (Ex. P31) and the contents thereof are practically useless in establishing the prosecution's case that the ransom calls were made from Om Prakash Yadav's mobile phone handset by inserting Bhuraji's SIM card, with mobile number 8305620342, therein."

32. In another matter of **William Stephen vs. The State of Tamil Nadu and Another** reported in **2024 INSC 146**, the Hon'ble

Supreme Court has observed in para 10 of its judgment as under:

"10. The first ingredient of Section 364A is that there should be a kidnapping or abduction of any person or a person should be kept in detention after such kidnapping or abduction. If the said act is coupled with a threat to cause death or hurt to such person, an offence under Section 364A is attracted. If the first act of kidnapping or abduction of a person or keeping him in detention after such kidnapping is coupled with such conduct of the person kidnapping which gives rise to a reasonable apprehension that the kidnapped or abducted person may be put to death or hurt, still Section 364A will be attracted. In the light of this legal position, now we refer to the evidence of the child-PW-2."

- 33.** In the present case, the prosecution's evidence establishes that the accused/appellants, particularly Khilawan Das Mahant alias Nikhil, had deceitfully taken away the victim child Shivansh Agarwal from his home on 20.02.2021 under the pretext of buying chips. The family members, namely Ramesh Kumar Agarwal (grandfather), Sarita Devi Agarwal (grandmother), and Rahul Agarwal (father), have consistently stated that the child was last seen leaving the house in the company of accused Nikhil. Further corroboration is provided by shopkeeper Raju Agarwal, who confirmed that the accused brought the child to his shop and left with him after purchasing some items. However, from the entire prosecution case and the evidence brought on record, it is not the prosecution's case nor is there any evidence to show that the

kidnapping was done for the purpose of making any ransom demand. There is no allegation of any ransom call having been made to the family members nor any evidence that the accused ever demanded any money or benefit from the family in exchange for releasing the child.

- 34.** The sequence of facts, as presented by the prosecution witnesses, merely establishes that the accused took the child away under a false pretext but does not establish any subsequent communication for ransom or any demand for consideration. The prosecution's case is confined to the act of taking the child and the subsequent recovery, without any link to ransom or extortion, therefore the appellants cannot be convicted for kidnapping for ransom rather they can be convicted only for kidnapping the minor boy which is punishable under Section 363 of IPC, therefore, this Court is of the opinion that the prosecution has able to prove the offence against the appellants only under Section 363 of IPC and the prosecution has failed to prove the offence under Section 364-A/34 against all the accused persons as well as Section 120-B of IPC against the appellant Khilwan Das Mahant alias Nikhil. Therefore, the conviction and sentence for the offence under Section 364-A/34 against all the accused persons as well as Section 120-B of IPC against the appellant Khilwan Das Mahant alias Nikhil are hereby set aside and they are acquitted from the said offences, however, the conviction of the appellant Khilwan Das Mahant alias Nikhil for the offence

punishable under Section 363 and 368/34 as well as conviction of the appellants Amardas Mahant and Sanjay Sidar for the offence punishable under Sections 363/34 and 368/34 are hereby maintained.

35. From the scrutiny of the entire evidence on record, it clearly emerges that the prosecution has successfully established the commission of the offence under **Section 363 IPC (Kidnapping)** and **Section 368 IPC (Wrongful Concealment of Kidnapped Person)** against the appellants. The evidence on record proves that the victim child Shivansh Agarwal was deceitfully taken away by the appellant Khilawan Das Mahant alias Nikhil under the pretext of buying chips, and thereafter, the child was wrongfully concealed. However, there is no evidence on record to establish that the kidnapping was for the purpose of ransom or extortion.
36. In view of the above, the trial Court has rightly appreciated the evidence and correctly convicted the appellants for the offences punishable under Sections 363/34 and 368/34 IPC, for which the maximum prescribed sentence is 07 years imprisonment.
37. Considering the nature and gravity of the offence and the circumstances of the case, the sentence of 07 years rigorous imprisonment imposed by the learned trial Court is neither excessive nor unreasonable. The fine sentence imposed by the trial Court shall remain intact.
38. The appellants are stated to be in jail since 21.02.2021 being the

date of arrest. They shall serve out the remaining part of the sentence awarded to them.

- 39.** The criminal appeals being CRA Nos.1790/2024, 1869/204 and 235/2025 are **allowed in part** to the extent indicated hereinabove.
- 40.** Registry is directed to send a certified copy of this judgment along with the original record of the case to the trial Court concerned forthwith for necessary information and compliance and also send a copy of this judgment to the concerned Superintendent of Jail where the appellants are undergoing their jail sentence to serve the same on the appellants informing them that they are at liberty to assail the present judgment passed by this Court by preferring an appeal before the Hon'ble Supreme Court, if so advised, with the assistance of High Court Legal Services Committee or the Supreme Court Legal Services Committee.

Sd/-
(Bibhu Datta Guru)
Judge

Sd/-
(Ramesh Sinha)
Chief Justice

HEAD NOTE

In absence of any evidence suggesting that the person kidnapped was taken or detained for the purpose of making a ransom demand or for coercing any person to act in a particular manner, the essential ingredients of Section 364A IPC are not satisfied. Mere kidnapping and concealment without a ransom demand do not attract Section 364A IPC.