

**Kundan Kumar Vs. State of Jharkhand**

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**Court :** Jharkhand

**Decided On :** May-17-2017

**Appellant :** Kundan Kumar

**Respondent :** State of Jharkhand

**Judgement :**

1 Criminal Appeal (DB) No. 681 of 2007 Against the Judgment of conviction and order of sentence dated 26th April, 2007 and 30th April, 2007, respectively passed by Additional Sessions Judge F.T.C-Ist, Bokaro, in Sessions Trial No. 133 of 2006. .. Kundan Kumar, son of Sri Parsu Ram Singh, resident of Tara Nagar, Chas, P.S. Chas, District-Bokaro Appellant Versus The State of Jharkhand Respondent For the Appellant : Mr. A.K.Kashyap, Sr. Advocate Mr. Anurag Kashyap, Advocate For the State : Mr. Shekhar Sinha, A.P.P. PRESENT Honble the Chief Justice Honble Mr. Justice Ananda Sen JUDGMENT By Court This Criminal appeal is directed against the judgment of conviction and order of sentence dated 26 th April, 2007 and 30th April, 2007, respectively passed by Additional Sessions Judge F.T.C-Ist, Bokaro, in Sessions Trial No. 133 of 2006, whereby the learned Sessions Judge convicted the appellant under Section 364 (A) of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for life with a fine of Rs. 500/-.

2. The prosecution case is based upon the written report of the informant Rajesh Kumar Singh dated 04.01.2006 at 11.08 P.M, wherein it is alleged that on 04.01.2006 at 4 P.M. his son Punit Kumar aged about six years, was found missing from the house. The informant has doubted that his son has been

- kidnapped for illegal purposes for which this accused and 2 another Ravi Kumar was instrumental as they were also not found in their house.
3. In course of investigation, the victim was recovered and his statement was recorded under Section 164 Cr. P.C. One of the accused being juvenile was tried by the Juvenile Court.
  4. After submission of the charge-sheet cognizance of the offence was taken and the case was committed to the Court of Sessions.
  5. Charge was framed against the accused under Section 364 (A)/34 of the Indian Penal Code. As the appellant claimed himself to be an innocent and denied the charges, he was put on trial.
  6. The prosecution, in order to prove its case, examined altogether eight witnesses.
  7. After closer of the evidence of the prosecution witnesses, statement of the accused was recorded under Section 313 of the Cr. P.C. The defence did not produce any evidence.
  8. We have heard learned counsel appearing for the appellant and learned Addl. Public Prosecutor appearing for the State.
  9. Learned counsel appearing for the appellant submits that the appellant has been falsely implicated in this case. He submits that from the evidence which has been adduced by the prosecution, the prosecution has failed to prove the charges under Section 364 A/ 34 of the Indian Penal Code. He submits 3 that even the testimony of the victim boy would not suggest that the offence as alleged is made out. It is submitted that in the evidence it has not come that there was a threat of life at the instance of this appellant nor there is any material to suggest that the appellant has demanded any ransom, so he cannot be convicted for the offence under Section 364 A /34 of the Indian Penal Code.
  10. On the other hand, learned Addl. P.P. submitted that the prosecution has been able to prove the case beyond all reasonable doubts. He submits that the minor

boy was kidnapped by this appellant and another and he was recovered from Delhi. He submits that the evidence of the boy will clearly suggest that this appellant has committed the offence under Section 364 A /34 of the Indian Penal Code.

11. As mentioned earlier, eight witnesses has been examined P.W.-1 Brajesh Kumar, P.W.-2, Suggi Devi, P.W.-3 Ram Narayan Singh, P.W.-4 Janardhan Sharma, P.W.-5 Punit Kumar (the victim boy), P.W.-6 Sri Ram Shankar Singh, P.W.-7 Rajesh Kumar Singh and P.W.-8 Harendra Tiwari.

12. P.W.-5 is the victim himself. After analyzing this witness it is clear that this victim was taken to the railway station in a tempo and on the pretext of purchasing shuttle from where he was taken to Delhi. In paragraph no.3 of his evidence he clearly stated that after reaching, Delhi he was taken to a hut and thereafter Kundan (appellant herein) left the place after leaving 4 him with Ravi. In paragraph no. 8 he stated that Kundan and Ravi were telling that he should ask for Rs.5,00,000/- (five lacks) from his father. In his evidence he has never stated that the appellant ever assaulted him or any threat of life was given to him. So far as the ransom is concerned, this witness only stated that Ravi and Kundan asked him to demand Rs.5,00,000/- from his father. Further in paragraph no. 16 he says that he never called his father from Delhi.

13. P.W.-3 who is the grandfather of the victim, in paragraph no. 4 of his evidence clearly stated that the victim boy was recovered from Delhi from the custody of Ravi but he did not take the name of this appellant. So far as ransom is concerned none of the witnesses has stated anything on this point as they have not received any call or any demand of ransom by any person.

14. Charges have been framed under Sections 364 A/ 34 of the Indian Penal Code. Section 364 (A), reads as follows; Whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction, and threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt, or causes hurt or death to such person in order to compel the Government or (any foreign State or international inter-governmental organization or any other person) to do or abstain

5 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. To fulfill the ingredients of Section 364 (A) there must be a threat to cause death or hurt or there must be something by the conduct of the accused to give rise to a reasonable apprehension that the abducted person may be put to death or hurt, or actually causes hurt to the persons, to do or abstain from doing any act or to pay any ransom.

15. From the evidence adduced in this case, it is clear that there is nothing to suggest that the minor was put under the threat of causing death or any hurt. From the analysis of the evidence, it also clearly suggest that there was no action on part of this appellant which can suggest that the boy was put to the fear of death or hurt. So far as ransom is concerned, there is nothing on record that any ransom was demanded by this appellant. On the contrary it has come in evidence that this appellant left the boy along with one Ravi in Delhi and went away.

16. After considering the evidence of witnesses available on record, this Court finds that there is no material against the present appellant to convict him under Section 364 A of the Indian Penal Code, for kidnapping of a child for demanding ransom. Therefore, this present appeal is allowed and the judgment of conviction and order of sentence is set aside. The appellant is acquitted for the charge levelled against him. The 6 appellant Kundan who is languishing in jail custody for near about 11 and half years shall be released forthwith, if not wanted in any other case.

17. Accordingly, this appeal stands allowed. (Pradip Kumar Mohanty, CJ) (Ananda Sen, J Jharkhand High Court, Ranchi The 17th May, 2017 NAFR/Amar/cp.3

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