

**Rahis Vs. State of Rajasthan**

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**Court :** Rajasthan

**Decided On :** Nov-24-2005

**Reported in :** RLW2006(1)Raj257; 2006(1)WLC738

**Judge :** V.K. Bali and; Shashi Kant Sharma, JJ.

**Acts :** Indian Penal Code (IPC) - Sections 120B, 364A, 365 and 384; Code of Criminal Procedure (CrPC) - Sections 161, 173(2) and 313

**Appeal No. :** D.B. Criminal Appeal No. 1698 of 2003

**Appellant :** Rahis

**Respondent :** State of Rajasthan

**Advocate for Def. :** Nirmala Sharma, Public Prosecutor and; Kamlendra Sihag, Amicus Curiae

**Advocate for Pet/Ap. :** Suresh Sahni and; R.M. Sharma, Advs.

**Disposition :** Appeal allowed

**Judgement :**

**V.K. Bali, J.**

1. Harbhan on 6.6.2002 went from his home to sell vegetables in the market of Govindgarh. No trace of him has been found till date.

2. Rahis and Natthi Singh, appellants herein, were tried Under Section 364A IPC - kidnapping for ransom. Section 365 IPC - kidnapping or abduction with an intent to secretary and wrongfully confine a person and Under Section 384 IPC - for extortion. Resultant trial culminated into their conviction Under Section 364A read with Section 120B IPC for which they were sentenced to life as also to pay fine of Rs. 1,000/- and in default of payment of fine, to further undergo SI for six months. They were also held guilty Under Section 365 IPC and sentenced to undergo RI for seven years as also to pay fine of Rs. 1000/- and in default of payment of fine, to further undergo SI for a period of six months. They have also been held guilty Under Section 384 IPC and sentenced to undergo R.I. for three years as also to pay fine of Rs. 1,000/- and in default of payment of fine, to further undergo SI for six months. This order of conviction was recorded against them on 25.11.2003 and 27.11.2003 by the Additional Sessions Judge (Fast Track), Kama.

3. It is significant to mention here that the police after investigation had filed challan Under Section 173(2) Cr.P.C. for offences Under Section 365 and 384 IPC. The matter was being tried before the Magistrate who after recording statements of four prosecution witnesses thought that the appellants should also be tried for offence Under Section 364-A IPC for which he took cognizance read with Section 120B IPC and on 28.4.2003 committed the case to the court of Sessions, which framed charges Under Section 364-A r/w 120-B, Section 365 and Section 384 IPC.

4. Prosecution version was disclosed for the first time by father of hapless young boy Harbhan on 14.7.2002 when he lodged a written report before the concerned police official. In the FIR lodged by him, he stated that his son Harbhan had gone from Village Rauf in the morning on 6.6.2002 like everyday routine to sell vegetables in the market of Govindgarh. After selling vegetables, when he was coming back to his village Rauf, persons of Rauf and neighbouring villages who too used to go in the morning to their shops noticed him on the track of Kaithwada but his son did not reach his house and disappeared between the track of Kaithwada and Village Rauf. He and his family members tried to locate Harbhan amongst their relatives and at other places but could find no clue of him. They then discussed the issue amongst family members and with Natthi on 9.6.2002 when

he told him and others that Harbhan had been kidnapped and further that whereabouts of his son were in his notice. He (Natthi) further asked the complainant not to report the matter to police or else he would not get his son and if he would eke out an amount of Rs. 1.25 lacs towards ransom in lieu of return of his son, then on his (Natthi's) guarantee, his son would be brought back. As per the version of Natthi, he passed on amount of Rs. 1.25 lacs to him as ransom at the shop of Pooran in Village Kaithwada in presence of Vishram, Shivram, Ramswaroop and Paramlal. Natthi continued to desist them from lodging the report to the police. Natthi misled them about the return of Harbhan from the kidnappers in lieu of ransom and now he was saying that neither the kidnappers were returning Harbhan nor the ransom about of Rs. 1.25 lacs. The first informant further stated that Natthi used to say that he would not be able to bring back his son if he was to lodge report to the police and it might also cause hurt to his son and because of fear, he could not lodge the report earlier. Now that he was making report, legal action should be taken.

5. During the course of trial, Babu, father of Harbhan, was examined as PW-1. He deposed in tune with the FIR lodged by him. He also stated that Natthi had made demand of money in presence of Paramlal, Shivram, Vishram, Pooran and some other persons of the village. He had informed the whole village with regard to the demand made by Natthi. Villagers had given their opinion that he should make arrangement of money and pay to him (Natthi). When ransom amount was paid to Natthi, he had told that Harbhan would come back within eight days but later he told that the concerned persons were neither returning Harbhan nor were they returning money. He stated name of the person who was not returning either the child or money, as Rahis. In cross-examination, he stated that Natthi was related to his son (Phuphaya Sasur). He denied the suggestion that Natthi was called by them, rather he came to the complainant party. He denied having made statement to the police from portion 'A' to 'B' wherein he stated that they had sent for Natthi. He denied having made any such statement. He admitted that when Natthi had come for the first time, he had gone back after stating that he was going to make a search of Harbhan. He came on the third day and then told about the demand of money. Natthi had told them that Harbhan had been kidnapped. With regard to the demand of money, Natthi had told them as was told to him by the kidnappers. He

was unable to give the exact date when Natthi had come to him. He stated that he was illiterate. He denied the suggestion that Natthi had taken him to Rahis and made him to talk over with him. He denied having made statement before the Magistrate that his son was with Rahis or that on two occasions when he had met Rahis, he had promised him that Harbhan would be returned. He denied having made such statement in Ex.D.I... statement made by him before the Magistrate. Vishram, uncle of Harbhan, who was examined as PW-2, stated that on the day when when Harbhan had gone to sell vegetables he was not in Village Rauf. He had received a telephonic call on 6.6.2002 from Babulal who enquired if Harbhan had come to him on which the witness replied that Harbhan had not come to him. On 7.6.2002, he went to Village Rauf where he came to know that Harbhan had gone to sell vegetables at Govindgarh on cycle but had not come back. They made search of Harbhan at number of places but on clue of the boy was found. After 4-5 days, Natthi came and stated that the body had been kidnapped and was with Rahis of Village Gadarwas. Rahis was demanding an amount of Rs. 1.25 lacs and if that amount was given to him, Harbhan would be brought back by him. Thereafter, they made payment of Rs. 1.25 lacs to Natthi at the residence of Pooran in Village Kaithwada. 7-8 days after payment was made, it was promised that the boy would be returned but the boy was not returned. On enquiry, he (Natthi) told them that they should not make report as those persons are dacoits and he and my son would be killed. It is for that reason that they had not lodged report earlier. They have not been able to get their boy. In cross-examination, he stated that they had not gone to Rahis but if Babu might have gone then he would not know. He also stated that they had said that the boy was with Rahis. Shivram, another uncle of Harbhan, examined as PW-3, deposed on the same lines like PW-2 Vishram. Param Lal, (PW-4), also related to Harbhan, corroborated the statements made by Vishram (PW-2) and Shiv Ram (PW-3) and deposed that when search was made for the boy and he was not found, third or fourth day from the day he got missing, Natthi came and told them that he will enquire whereabouts of the boy and if an amount of Rs. 1.25 lacs would be paid he will bring Harbhan back. This amount was demanded by Natthi in his presence and in presence of Vishram, Shiv Lal and Babu. The amount of Rs. 1.25 lacs was given to Natthi at the shop of Pooran. He (Natthi) had told them that the boy was with

Rahis and would return after few days but neither the boy was returned nor the amount of ransom.

6. During the course of investigation, police is said to have recovered amounts of Rs. 3,500/- and Rs. 16,500/- separately from appellant Natthi. Witnesses of recovery i.e. Azmat, Shahzad and Sallu examined as PW-5, 6 and 7 however did not support the prosecution case. They were declared hostile and cross-examined by the learned Public Prosecutor. Rajendra Singh Chauhan, SHO examined as PW-10 deposed with regard to the steps that ne had taken while investigating the case.

7. When examined under Section 313 Cr.P.C. the accused appellants while denying the incriminating material put to them, pleaded innocence and false implication. Natthi admitted recovery of money from him on two different occasions but stated that it belonged to him. In defence, they relied upon some portions of the statements made by the prosecution witnesses before the police of Magistrate, as the case may be.

8. Mr. Biri Singh who represents Natthi in Criminal Appeal No. 119/2004 and Mr. Sahni who represents Rahis in Criminal Appeal No. 1698/2003 are on a common platform with regard to the contentions pertaining to delay in lodging the FIR and non-applicability of Section 364-A IPC. On merits of the case, whereas Mr. Sahni contends that the prosecution has led no evidence to connect appellant Rahis with the crime but for the statement made by his co-accused Natthi and which alone would not be sufficient to sustain conviction, Mr. Biri Singh in support of the appeal filed by Natthi however, contends that the statements made by the first informant and his other relatives like Vishram, Shivrarn and Param Lal need be discarded as in the first information report or the statements made by them Under Section 161 Cr.P.C. they stated that they had gone to make enquiries from Natthi for whereabouts of Harbhan but when they came into the witness box, they changed their version by stating that Natthi had come to them after 3-4 days when Harbhan had gone to sell vegetables in the market. He further contends that Udaibhan and Yadram who as per prosecution version had seen Harbhan up to a particular distance when he was returning after selling vegetables were not produced and

therefore, it could not be said whether Harbhan was kidnapped in the market itself where he had gone to sell vegetables or elsewhere. He also contends that PW-5 Azmat, PW-6 Shahzad and PW- 7 Sallu before whom police is stated to have made recovery of part of the ransom amount on two different occasions, turned hostile and did not support the prosecution case. In any case, prosecution led no evidence to identify that the money recovered from the appellant Natthi was the same which was handed over by the complainant party to him. Currency notes had no identification mark, further contends the learned counsel.

9. We have heard learned counsel appearing for the parties and with their assistance examined records of the case.

10. Before we may take into consideration and return findings on contentions raised by the learned counsel, peculiar to their individual cases, we would like to deal with two fold common contentions of the learned counsel pertaining to delay in lodging the FIR and applicability of Section 364-A IPC.

11. Occurrence of kidnapping of Harbhan had indeed taken place on 6.6.2002 whereas FIR with regard to the incident was lodged on 14.7.2002. There does appear to be considerable delay in lodging the FIR but in the facts and circumstances of the present case, this Court is of the firm view that the same was natural. The first anxiety of Babu and his family members was safety of Harbhan. Natthi had not only assured Babu and others that the boy shall be restored to them but he had also clearly stated that the kidnappers were dacoits and any report lodged to the police would be at their peril. Not only that the boy shall be harmed but their action would be sternly repelled by the kidnappers. The anxiety and burning desire to get Harbhan back alive was of paramount interest at that stage. Natthi had kindled hope that Harbhan would now come back. He in fact had taken guarantee for the same. Delay in lodging FIR in such circumstances, as mentioned above, was natural and is thus well explained.

12. In so far as applicability of Section 364-A IPC is concerned, it is true that the police presented challan Under Section 173(2) Cr.P.C. for offences Under Section 365 and 384 IPC. It is also true that the case was being tried by a Magistrate and it was only after four prosecution witnesses were examined that the concerned

Magistrate took cognizance of offence Under Section 364-A IPC as well and then committed case to the court of Sessions, offence Under Section 364-A IPC being exclusively triable by the Sessions Court. Learned counsel appearing for the parties have not argued that the Magistrate before whom trial was being conducted sans Section 364-A IPC could not take cognizance of the said offence. What however is being strenuously urged is that in the facts and circumstances of the present case, there was no applicability of Section 364-A IPC. With a view to appreciate contention of the learned counsel, it would be appropriate to reproduce Section 364-A IPC. The same reads 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.

13. From the language employed in Section 364-A IPC, reproduced above, it would appear that ingredients of the offence would be complete even when a person kidnaps or abducts and by his conduct gives rise to a reasonable apprehension that such a person may be put to death or hurt. It is, therefore, not necessary that the victim who had been kidnapped or abducted must be done to death. It is also made out from the language of Section 364-A IPC that it is not necessary or essential to establish corpus dilecti. Reference in this connection may be made to the judgments of the Supreme Court in *Sevaka Perumal v. State of Tamil Nadu* : 1991 CriLJ1845 . In *Brijesh Kumar v. State* : AIR1958 All514 . Despite the fact that ingredients of offence would be complete when a reasonable apprehension may arise that the kidnapped or abducted person would be put to death or hurt and that proof of corpus dilecti was not essential, yet the prosecution has to lead evidence that the victim was indeed kidnapped or abducted. What is being urged by the learned counsel for the appellants is that the prosecution led no evidence to show as to who had abducted Harbhan or who had kept him in

detention after such kidnapping or abduction. The prosecution, it is urged, relies on the statement of appellant Natthi alone but even if that is taken to be a gospel truth, it will show no kidnapping or abduction by the appellant Natthi.

14. We find considerable merit in the aforesaid contention of the learned counsel. The very heading of Section 364-A is 'Kidnapping for ransom'. Kidnapping or abduction for ransom is thus essential to constitute an offence Under Section 364-A IPC. The Section certainly pertains to an offender who might have kidnapped or abducted any person or after he had been kidnapped or abducted, kept him in detention. If there is no evidence led by the prosecution as to who kidnapped or abducted Harbhan or who kept him in detention after such kidnapping or abduction, the ingredients of Section 364-A IPC would not be complete. It may be recalled at this stage that the police did not file challan against the appellants Under Section 364-A. IPC. Challan was put up only Under Section 365 and 384 IPC. The case was being tried by the Magistrate who after recording statements of four prosecution witnesses took cognizance of the offence Under Section 364-A IPC and committed the case to court of Sessions. The police, it appears to this Court, was conscious of the fact that the evidence collected by it would not attract commission of offence Under Section 364-A IPC. If perhaps, we were to hold appellant Rahis guilty of kidnapping, appellant Natthi could have been held guilty for the same offence with the aid of Section 120B IPC. In the forth-coming paragraphs, we are returning a finding that Rahis cannot be held guilty for any offence, whatsoever.

15. Dealing now with individual case of the appellants, it would be seen that in so far as appellant Rahis is concerned, there is absolutely no evidence against him but for the statement made by his co-accused Natthi before PWs. 1 to 5. Statement of a co-accused is inadmissible in evidence and cannot be taken into consideration for recording a finding of guilt against the accused. However, even if it might be assumed that the statement of co-accused is admissible and could be read against the appellant Rahis, the same has to find some corroboration. Surely and admittedly, no other evidence has been led by the prosecution to sustain conviction against the appellant Rahis but for the statement of his co-accused appellant Natthi. Learned Trial Judge, it appears, relied upon part of the statement

made by DW-1 Babu before the Magistrate. In his cross-examination, he stated that in his statement he had told the police that he had gone on couple of occasions to Rahis who promised to return the boy to him. He also stated that he had gone to Rahis 2 or 2 1/2 months after the occurrence. Mr. Sahni learned counsel appearing for the appellant Rahis appears to be on a solid wicket in contending that such a statement was not made by Babu before the police when he lodged the FIR and further that Babu did not adhere to his statement made before the Magistrate and the depositions made by him when he appeared before the learned Sessions Judge as PW-1. He stated nothing at all with regard to involvement of Rahis in his examination-in-chief but for information given to him with regard to his missing son by Natthi Singh who of course stated that his son was with Rahis. In the examination in chief, therefore, this witness did not state that he had gone to Rahis on couple of occasions and he was promised that Harbhan shall be given to him. In the cross-examination adverted to him, he specifically denied portions of his statement made before the Magistrate, marked G to H, I to J and K to L. Portion G to H in Exh.D.I when translated into English reads as under:-

I had met Rahis after making the payment.

Portion I to J when translated into English reads as under:-

I had told the police in my statement that my son is with Rahis.

Portion K to L when translated into English reads as under:-

I had gone to Rahis 2 or 2 1/2 months after the occurrence.

The three relevant portions of the statement made before the Magistrate which alone might involve appellant Rahis have been specifically denied when Babu appeared as PW-1 before the learned Sessions Judge. No reliance thus could be placed upon the statement made by him before the Magistrate. That apart, the witness going to Rahis after 2 to 2 1/2 months after the occurrence, which would be after lodging the FIR, appears to be incorrect and after thought. There is no other evidence against appellant Rahis but for the statement made by his co-

accused Natthi and co-appellant as well and on the basis of that alone, this Court is of the firm view, no conviction could be sustained against him.

16. In the facts and circumstances of the present case, it is probable that Natthi, who was related to the complainant party, had demanded money and in fact received it, could well himself kidnap the boy and since the boy was of the age of discretion, if he was to come back he would have certainly told his father as to who had actually kidnapped him, Natthi might have done away with him. If that possibility cannot be ruled out, which rather appears to be probable in the facts and circumstances of the present case, Rahis cannot be held guilty.

17. In so far as case of appellant Natthi is concerned, the same stands on a different footing. There is no merit whatsoever in the contention of the learned counsel representing him that while lodging FIR Babu (PW-1) had got recorded that they had gone to Natthi to enquire the whereabouts of Harbhan whereas in the statement made by him in court, it was mentioned that the appellant Natthi had come to them.'There is consistent evidence of Babu, Vishram, Shivram and Param Lal that Natthi had visited village of the complainant party on number of occasions and promised that the boy would be restored to them. There is also consistent evidence that amount of Rs. 1.25 lacs was paid to him in presence of number of persons. Learned counsel representing appellant Natthi has not been able to show any material contradiction in the depositions made by the witnesses named above. Even if evidence with regard to recovery of ransom money is excluded, evidence of witnesses named above, which inspires confidence, would be enough to prove offence e against him beyond shadow of reasonable doubt. Non-examination of Udai Bhan and Yadram would also be of no help to the appellant Natthi as it would be wholly immaterial as to from which particular place Harbhan was kidnapped. Prosecution, it appears, brought home offence against the appellant Natthi beyond shadow of reasonable doubt. DB Criminal Appeal No. 119/2004 filed by natthi deserves to be partly allowed in as much as whereas he shall be held guilty for offences Under Section 365 and 384 IPC, he would not be held guilty for offence Under Section 365 and 384 IPC, he would not be held guilty for offence Under Section 364-A IPC. The order of conviction and sentence recorded against him Under Section 364-A IPC is set aside.

18. In so far as D.B. Criminal Appeal No. 1698/2003 that has been filed by Rahis is concerned, the same is allowed. Order of conviction and sentence passed by the Trial Court against appellant Rahis is set aside and if not on bail, he is ordered to be released forth with, if not required in any other case. If on bail, his bail bonds shall be cancelled.

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