

## Vinod Kumar and etc. Vs State of Haryana

**Court:** High Court Of Punjab And Haryana At Chandigarh

**Date of Decision:** Sept. 7, 2005

**Acts Referred:** Criminal Procedure Code, 1973 (CrPC) â€” Section 173, 41(1)  
Penal Code, 1860 (IPC) â€” Section 363, 364, 364A, 365

**Citation:** (2006) CriLJ 170 : (2005) 4 RCR(Criminal) 474

**Hon'ble Judges:** Pritam Pal, J; Mehtab S. Gill, J

**Bench:** Division Bench

**Advocate:** Gorath Math and Liza Gill, for the Appellant; S.K. Garg, Addl. A.G., for the Respondent

### Judgement

Pritam Pal, J.

By this judgment, we will dispose of two Criminal Appeals i.e. Crl. Appeal No. 734-DB of 2004 and Crl. Appeal No. 877-

DB of 2004, filed by appellants Vinod Kumar and Ravinder Kumar, respectively. Since both these appeals arise out of one and the same

judgment and order passed in Session Case No. 8 of 2003, therefore, they are being decided by this common judgment.

2. Both the appellants were convicted under Sections 363, 364-A and 365 of I.P.C. vide judgment dated 22-7-2004 and sentenced vide order

dated 2-1-7-2004 as under :

Under Section 363, IPC both the appellants were sentenced to undergo R.I. for five years and to pay a fine of Rs. 5000/- each and in default

thereof to further undergo R.I. for three months;

Under Section 364A, IPC they were sentenced to undergo imprisonment for life and to pay a fine of Rs. 10,000/- each and in default thereof to

further undergo R.I. for six months each;

Under Section 365, IPC they were ordered to undergo RI for five years and to pay a fine of Rs. 5000/- each and in default thereof, to further

undergo R.I. for three months each. However, all the substantive sentences were ordered to run concurrently.

3. In nut-shell, the fact culminating to the commencement of these appeals may be recapitulated thus :

On 28-5-2000, Miss. Disha, aged about 3 years, daughter of Ashok Kumar, complainant (PW-3), a shop-keeper, had gone from her house in the

street for playing, but she did not turn up in the evening. Then, he (Ashok Kumar) kept on searching her, but no clue was found. Ultimately, he got

lodged a report vide D.D.R. No. 15 dated 27-5-2000 (Ex.DB) at about 11 a.m. before Sh. Chamela Ram, Sub-Inspector in Police Station, City

Panipat, in the above narration of facts. Since no offence was made out from the statement of Ashok Kumar, so, no case was registered at that

time. However, information regarding missing of the child was sent to different police stations.

4. It was on 30-5-2000, that a telephonic message was received from some un-known person by Smt. Sudha (PW-2), mother and Ashok

Kumar, (PW 3), father, of Disha, a victim in this case. The caller had made a demand of ransom to the tune of Rs. 10 lacs so that the girl child

could be released. At that time, it was also stated by the caller that in case, the aforesaid amount was not given in the manner told on the telephone,

then his daughter would be killed. Further, they were also warned not to intimate the police. On receipt of the call in the above narration of the

facts, complainant Ashok Kumar rushed to the police station and informed the police, upon which, a formal FIR Ex.PK was recorded by Raghbir

Singh Inspector at 9.15 a.m. on the same day under Sections 364 and 365, IPC. Thereafter, the investigation of this case was entrusted to PW5

S.I. Dhoop Singh, who inspected the place from where Disha was kidnapped. In that behalf, he also prepared a rough site plan Ex.PC with his

correct marginal notes in his hand. At this place, it would be pertinent to mention that on 1-6-2000, PW-7 S.I. Sunil Kumar, Incharge of Police

Station, Santrason, Paharganj, Delhi, on receipt of secret information regarding the presence of a person who had kidnapped a girl child from

Panipat, had gone to the STD booth, situated at Gali Hari Mandir near VIP Hotel and there, he arrested a boy who was standing outside the

booth. Upon asking, he disclosed his name as Vinod, as one of the appellants. Thereafter, he was apprehended and interrogated, whereupon he

suffered a disclosure statement Ex.PE, which was signed by him and other witness. Upon his personal search, the bills of STD and one paper

having code words relating to that kidnapping were also recovered vide recovery memo Ex.PF. In his disclosure statement, he (Vinod Kumar)

stated that after kidnapping the girl, he had left her with his co-accused Ravinder Kumar, at Haridwar and he could identify the place and get

recovered the said child. Then in pursuance of his said disclosure statement, he led the police party to Haridwar and there, the appellant pointed

out Nandeshwar Prachin Shiv Mandir, from where his co-accused namely, Ravinder Kumar was seen coming from opposite direction, having the

custody of Kumari Disha. At the spot, he (Ravinder Kumar) was arrested. Custody of the child was taken vide memo Ex.PH. Thereafter, the

police party came back to Delhi. In the meantime, Kumari Disha was also got medicolegally examined in the Lady Harding Hospital, Delhi. Both

the appellants were challaned u/s 41(1) of Cr.P.C.

5. On 1-6-2000, after effecting the arrest of Vinod Kumar appellant, an intimation was also given to police of Panipat. On 2-6-2000, custody of

the girl was handed over to her father. On the same day, S.I. Dhoop Singh (PW-5) who is the Investigating Officer in this case recorded the

statements of the police officials who had recovered the prosecutrix from the possession of the accused. Thereafter, custody of both the appellants

was taken by the Investigating Officer. It was on 3-6-2000 that both the appellants were taken out of the police lock up for identification of the

place of occurrence and identification memo Ex.PD was prepared. After completion of the formal investigation of this case, report, u/s 173,

Cr.P.C. was filed against the appellants by Inspector Raghbir Singh, the then S.H.O., Police Station, City Panipat.

6. Both the appellants were charge sheeted for commission of offences punishable under Sections 363/364-A and 365 of I.P.C. by the learned

trial Court vide its order dated 4-2-2001, to which they pleaded not guilty and claimed trial.

7. The prosecution in order to substantiate its case, examined as many as 11 witnesses, namely, PW-1 HC Rajinder Singh, he proved his affidavit

Ex.PA regarding the special report taken to the Ilaqa Judicial Magistrate; PW-2 Smt. Sudha, she is mother of the victim and had received a

telephonic call at her house from unknown person; PW-3 Ashok Kumar, he is the complainant and father of Kumari Disha; PW-4 HC Azad

Singh, he is a witness to the recovery of identification of the place of occurrence, at Panipat; PW-5 SI Dhoop Singh, he is the Investigating Officer

in this case; PW-6 HC Balwan Singh of Police Station, Nai Subzi Mandi, Azadpur, Delhi, he had accompanied the police party, who had

apprehended Vinod Kumar appellant from Paharganj on 1-6-2000; PW-7 SI Sunil Kumar, Police Station, Paharganj, he had arrested the

appellant Vinod Kumar on 1-6-2000 and recorded his disclosure statement Ex.PE. He also arrested other appellants Ravinder Kumar on 2-6-

2000 from Haridwar; PW-8 Inspector Raghbir Singh, he had recorded the F.I.R. Ex.PK and then made his endorsement thereon as Ex.PK/1;

PW-9 HC Mehtab Singh, he proved DDR No. 15 dated 27-5-2000; PW-10 Constable Rajesh Kumar, he prepared the scaled site plan Ex.PL

of the place of occurrence from where Kumari Disha, was kidnapped and PW-11 Tirllok Singh, he is the owner of STD booth situated at

Paharganj, New Delhi, where appellants Vinod Kumar was found standing by the police.

8. After closure of the prosecution evidence, the accused were examined in terms of Section 313, Cr.P.C., wherein they denied all the

incriminating evidence appearing against them. The appellants also examined DW-1 Dr. Raj Kumar Sharma. He deposed with regard to the

announcement pertaining to the missing of 21/2 years old child, namely, "Nisha" on 27-5-2000 at 8.45 p.m. However, his testimony could not be

linked with the victim of the case in hand.

9. The learned trial Court after appraising the evidence brought on the file and hearing the learned Counsel for the parties, convicted and sentenced

the appellants, as indicated in the opening part of this judgment. This is how feeling aggrieved, the appellants have come up in these appeals before

this Court.

10. We have heard learned Counsel for the parties and with their assistance have gone through the file carefully.

11. At the outset of their arguments, learned Counsel for both the appellants submitted that in the instant case, provisions of Section 364-A, I. P.

C. could not have been attracted by the learned trial Court inasmuch as provisions of said section could be invoked only when the offence is

committed against the Government or any foreign State or international, inter governmental organisation. Here, in this case, the case was got

registered by a private individual, so none of the appellant could have been convicted and sentenced u/s 364-A, I. P. C. In support of this

contention, reliance was placed in the case of Balwant Singh v. State of Haryana (2002) 2 RCR 369.

12. The second and last point of their argument is that in this case, there are contradictions regarding the extent of demand of ransom in the

statements of PW-2 Smt. Sudha, mother and PW-3 Ashok Kumar, father of the victim. Besides that, recovery of Disha from the custody of

appellant Ravinder Kumar, as set up by the prosecution, is also doubtful as no independent witness was joined at Haridwar while effecting the

recovery of the child. It was also submitted that in this case link evidence regarding reaching of Panipat police of Delhi for taking the custody of the

child is also missing. After putting-forth the aforesaid points of arguments, learned Counsel for the appellants contended for their acquittal.

13. On the other hand, Mr. S. K. Garg, learned Addl. A. G. appearing on behalf of the State of Haryana, contended that here in the instant case,

the appellants were arrested by the police of Delhi, which had no interest or any motive in the success of this case, which was registered in the

State of Haryana. He then made reference to the testimony of material witnesses, namely, PW-3 Ashok Kumar, PW-5 S. I. Dhoop Singh and

PW-7 S. I. Sunil Kumar and then contended that the case of the prosecution stood fully proved in this statements, which are consistent on all the

material points of this case. 14. We have given our thoughtful consideration to the rival contention raised on behalf of the parties and find no merits

in any of the above pleas except the first one pertaining to the charge framed u/s 364-A of I.P.C., raised on behalf of learned Counsel for the

appellants inasmuch as it has come in the evidence of PW-2 Smt. Sudha and PW-3 Ashok Kumar (complainant), mother and father, respectively

of the victim that at the initial stage, they had received the call of unknown person regarding demand of ransom to the extent of Rs. 10 lacs. Later

on, the unknown caller had asked for ransom of Rs. 8 lacs and ultimately, it was settled down at Rs. 6 lacs. In this view of the explanation given by

the aforesaid two witnesses, no sanctity can be attached to the contradictions/variations pertaining to the demand of ransom. Recovery of the child

was effected in pursuance of the disclosure statement Ext. PE. After making the said statement, appellant Vinod Kumar had straightway taken the

police party of Delhi to the place disclosed by him at Haridwar and there, he got recovered the child from the custody of other appellant namely,

Ravinder Kumar. In that behalf, recovery memo Ex. PH was prepared at the spot. No doubt, at the time of effecting the recovery of the child no

independent witness was joined at Haridwar, but the said recovery memo has been duly proved in the statements of PW-6 HC Balwant Singh and

PW-7 S. I. Sunil Kumar. Moreover, the said recovery memo is also signed by both the appellants. No discrepancies could be pointed out in the

statements of the aforesaid witnesses by learned Counsel for the appellants. It is also well proved on the file that after effecting the recovery of the

child, an information was sent to that effect in the police station at City Panipat, whereupon, the complainant party alongwith PW-5 S. I. Dhoop

Singh, the Investigating Officer had gone to police station Delhi, where custody of the child was entrusted to her father (PW-3 Ashok Kumar).

15. In this view of our foregoing discussion, we find no merits in any of the above points of arguments raised by learned Counsel for the appellants.

Even otherwise, such points do not go to the root of this case.

16. Now advertng to the main point of argument pertaining to the conviction and sentence of the appellants recorded u/s 364-A of I. P. C., in this

regard, as submitted above, there is no evidence on the file to show if any Government or any foreign State or international inter-governmental

organisation, was compelled by the appellants to do or abstain from doing any act, or to pay a ransom, hence, the provisions contained in Section

364-A of I. P. C. could not have been attracted. Faced with such a situation, the conviction and sentence awarded u/s 364-A of I. P. C. by the

learned trial Court, was found to be unsustainable by this Court in Balwant Singh's case 2002 (2) RCR 369 (supra). Here, in the instant case, it is

the private individual namely, Ashok Kumar (PW-3) who categorically deposed that on 30-5-2000, a telephonic message was received at his

house, which was first attended by his wife, then she had handed over the telephone to him. According to him, that telephone was of unknown

person, who had demanded Rs. 10 lacs for releasing his daughter. He further testified that the said unknown caller had also told that he would

again contact him on the following day and so, he again asked if he (Ashok Kumar complainant) had arranged the said amount. At the same time,

he (caller) had also told that if he (complainant) had arranged Rs. 10 lacs, he could give that amount to his wife (PW-2 Sudha) so that she could

come in Dadar Express Train to Narela, where after getting the money, they (appellants) would hand over her daughter. He further testified that it

was also stated by unknown caller that if money was not paid to them, then his daughter Disha would be killed by them. The aforesaid version of

PW-3 Ashok Kumar also finds corroboration from the statement of his wife. PW-2 Smt. Sudha. In his cross-examination, nothing could be

elicited from the mouth of PW-3 favouring the appellants.

17. In this view of our foregoing discussion and also relying upon the observations made in Balwant Singh's case 2002 (2) RCR 369 , we have no

hesitation to hold that the offence u/s 364A of IPC, is not made out against any of the appellants. However, an offence punishable u/s 364 of IPC,

which is a lesser offence of Section 364-A of IPC, is clearly proved to have been established against both of them. Thus, they are acquitted of the

charge framed against them u/s 364-A of IPC, but at the same time, they are convicted and sentenced u/s 364 of I. P. C. So both the appellants

are sentenced to undergo R. I. for 10 years with a fine of Rs. 10,000/- each u/s 364 of IPC. In default of payment of fine, they shall further

undergo R. I. for six months. The conviction and sentence recorded under Sections 363 and 365 of I.P.C. by the learned trial Court are

maintained.

18. In the result, both the appeals are partly allowed, only to the extent as indicated above.