

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.674 of 2004**

1. PREM KUMAR Son of Late Babu Lal Mahto
2. Birju Rana @Birju Kumar Rana Son of Jeet Bahadur Rana, Both are resident of Village- Sonapur, P.s. sonapur, District- Saran.

... .. Appellant/s

Versus

State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Anirudh Kumar Sinha, Adv.
For the Respondent/s : Mrs. Anita Kumari Singh, APP

CORAM: HONOURABLE JUSTICE SMT. G. ANUPAMA CHAKRAVARTHY

ORAL JUDGMENT

Date : 11-03-2026

1. The criminal appeal is arising out of the judgment of conviction and sentence dated 21.09.2004, on the file of the Learned Additional Sessions Judge, FTC-V, patna, in Sessions Trial No. 776 of 1996, arising out of Patliputra P.S. Case No. 167 of 1995, wherein the appellants were convicted for the offences punishable under Section 363 read with Section 34 of the Indian Penal Code (hereinafter referred as I.P.C.), and were sentenced to undergo rigorous imprisonment for a period of five years along with fine of Rs. 1000/- and in default of payment of fine to suffer



rigorous imprisonment for three months each. Further, the appellants were convicted for the offences punishable under Section 365 r/w 34 of I.P.C. and were sentenced to undergo rigorous imprisonment for a period of five years and to pay a fine of Rs. 1000/- and in default of payment of fine, to undergo rigorous imprisonment for three months each. All the sentences were ordered to run concurrently.

2. Heard the arguments for the Learned counsel for the appellants, Mr. Anirudh Kumar Sinha and the Learned Additional Public Prosecutor for the State, Mrs. Anita Kumari Singh. Perused the record.

3. The case of the prosecution, is that one Sun Bahadur/informant preferred his *fardebayan* dated 05.09.1998 at about 08:00 P.M. before the Station In-charge, Patliputra Police Station. The contents of the *fardebayan* disclose that on 05.09.1995 at about 07:00 A.M., the informant's son, Mukesh Kumar, student of 10th class, aged about 14 years, went to his school, i.e.,



Modern Sainik School, New Patliputra Colony, Patna. He was wearing a half shirt and full pant of white colour, and his height was approximately 4 feet 9 inches. The informant had gone to his duty at the bank. At around 2:30 P.M., his relative, Tuntun Kumar Thapa/P.W.1, brought an envelope and informed him, that his son has been kidnapped. The envelope contained an anonymous letter addressed to the informant's wife, Mira Devi, instructing her to reach Devi Talkies, Bokaro, within three days with a ransom amount of Rs. 1.5 lakhs, along with a threat that, if she informed anyone or the police, her son's life would be taken away. Further, the *fardebayan* disclose that the school dismissal time was 1:15 P.M. As soon as he received the letter, the informant informed his wife. In turn, she went to the school and came to know that her son attended all the classes.

4. Basing on the *fardebayan* of informant, initially, FIR was lodged against unknown persons vide Criminal Case No. 167 of 1995 on the file of Patliputra Police Station for the offences punishable



under Section 363 of I.P.C. Later, at the requisition of the Investigating Officer, Section 364 of the I.P.C. was added on 21.10.1995. During the course of investigation, the police recorded the statements of the prosecution witnesses. Further, the victim boy was brought to the house of the informant, by the grandmother of appellant no. 2.

5. On completion of the investigation, police laid charge-sheet against both the accused under Sections 364 of I.P.C. On 19.02.1998, the trial Court framed charge against both the appellants for the offences punishable under Section 364(A) r/w 34 of the I.P.C. The charges were read over and explained to both the appellants, for which they pleaded not guilty and claimed to be tried.

6. During the course of trial, the prosecution has examined altogether eight witnesses i.e., P.Ws. 1 to 8, and marked three documents as Exhibits. The name and details of P.Ws. and list of exhibits are as follows:-



P.Ws.No.	P.W.s Name	Relation
P.W. 1	Tuntun Bahadur Thapa	Cousin of Victim
P.W. 2	Mira Devi	Mother of Victim/wife of informant
P.W. 3	Sun Bahadur	Informant/father of victim
P.W. 4	Tej Bahadur Thapa	Father of P.W. 1
P.W. 5	Mina Devi	Aunt of Victim/Sister P.W. 2
P.W. 6	Ram Bahadur Thapa	Husband of P.W. 5
P.W. 7	Munni Devi	Aunt of victim
P.W. 8	Mukesh Kumar	Victim boy

Sl. No.	Exhibit	Exhibit Details
1.	Ext. 'X'	Letter
2.	Ext. 1	Written information/ fardbeyan
3.	Ext. 2	Statement u/s 164 Cr.P.C. of victim/Mukesh Kumar

7. On completion of the examination of the prosecution witnesses, the accused/appellants were examined under Section 281 of the Cr.P.C. with regard to the incriminating evidence appearing against them. On behalf of the defence, D.Ws. 1 to 3 were examined.

8. After considering the entire material available on record, the trial Court convicted both the appellants for the offences punishable under Section 363 r/w Section 34 of I.P.C. and under



Section 365 r/w Section 34 of I.P.C.

9. The points for determination in this appeal are :-

(i) Whether the prosecution is able to prove the guilt of the appellants, for the offences punishable under Sections 363 r/w 34 of I.P.C and under Section 365 r/w 34 of I.P.C. beyond reasonable doubt?

(ii) Whether the trial Court has rightly convicted and sentenced the appellants for the aforesaid offences?

10. In order to decide the aforesaid points for determination, it is just necessary to re-appreciate the evidence on record.

11. It is pertinent to mention that the *fardebayan* does not disclose the names of the culprits who were alleged to have kidnapped P.W. 8/Mukesh Kumar. The *fardebayan* is also silent as to the name of the person, who allegedly handed over the letter to P.W. 1, which disclose the demand of ransom for kidnapping of the victim. It is also relevant to mention that P.Ws. 1, 4, 5, 6 and



7 have not supported the case of the prosecution in any manner and were declared as hostile. Therefore, this Court excludes the evidence of P.Ws. 1, 4, 5, 6 and 7, from consideration while appreciating the case in the present appeal.

12. The evidence of P.W. 1/Tuntun Bahadur Thapa partly disclose that on 05.09.1995, at around 2:00–2:30 P.M., while he was sleeping in his house, an unknown person came with an envelope and handed it over to his father. After receiving the same from his father, he opened it and noticed that the letter was addressed to Mira Devi/P.W. 2, demanding a ransom of Rs. 1.5 lakhs and directing the said amount be handed over to the unknown person at Devi Talkies, Bokaro. His evidence further disclose that Mira Devi/P.W.2 was his aunt, and he went to her house to hand over the said letter. He further testified that he searched for the victim boy, but could not find him. However, when the said letter was shown to P.W. 1 in open Court, he denied that it was the same letter which he had handed over to P.W. 2. The said



letter was marked for identification purpose through P.W. 1.

13. It transpires from the evidence of P.W. 1 that he received a letter demanding ransom for kidnapping of P.W. 8. However, the said material could not be brought on record either by examining the person who allegedly handed over the letter to the father of P.W. 1 or through P.W. 1 himself. Therefore, the letter, which was subsequently marked for the purpose of identification as "X", could not be looked into by the trial Court and the contents cannot be read as documentary evidence for convicting the appellants. It is also relevant to mention that the father of P.W. 1, who allegedly received the letter from an unknown person, was examined before the Court, but was declared hostile, as he specifically denied having received any such letter from any unknown person.

14. The evidence of P.W. 2/Mira Devi, the mother of the victim, disclose that her son/Mukesh Kumar, was kidnapped on 05.09.1995, on



Teacher's Day. At around 3:00-4:00 P.M., P.W. 1 came to her house with a letter, which demands for ransom for releasing her son. She further testified that after six days of the incident, the grandmother of appellant no. 2 brought the victim to her house, and thereafter, the victim/P.W. 8 informed her that appellant no.2 kidnapped him from the school. Further, the evidence of P.W. 2 disclose that appellant no. 2, being her sister's son, used to demand money from her, and he had also demanded a sum of Rs. 3,000/-, three days prior to the incident.

15. In cross-examination, P.W. 2 testified that she did not know the exact day or date when appellant no. 2 demanded money and that she did not give any information to any official regarding such demand. She stated that she could identify appellant no. 2 as her sister's son, who used to visit her house to play with the victim boy/Mukesh. P.W. 2 further testified that she was informed by the victim about the kidnapping by appellant no. 2. However, she did not remember the place where



the victim was kept during the six-day period of kidnapping. Further, it is testified that the appellant no. 2 resides at Sonapur, and the victim boy has never visited the house of appellant no. 2 (Birju) prior to the incident.

16. P.W. 3/ Sun Bahadur, is the father of the victim. His evidence disclose that he was on duty at the time of the incident and he was informed by P.W. 2 about the letter. Thereafter, he searched for his son but could not find him. He further deposed that he gave a written information regarding the incident to the police station, which bears his signature but the same was written by one Rai Sahab, which was marked as Exhibit 1. His evidence also disclose that after six days of the incident, his son was brought back to the house, who, in turn, informed him that appellant no. 2 had taken him away.

17. In cross-examination, P.W. 3 testified that the victim was four years younger than appellant no. 2, and appellant no. 2 and his parents regularly used to visit their house since the



time of their marriage (about 15 years prior to the incident). He further testified that appellant no. 2 never behaved suspiciously, during such visits and was never involved in any criminal activity. He also stated that the victim did not inform him that appellant no. 2 had coaxed or manipulated him while taking him from the school.

18. The evidence of P.W. 4/Tej Bahadur Thapa, only disclose that he heard rumours regarding the kidnapping of Mukesh Kumar and, except for that, he was not aware of anything. He did not receive any letter demanding ransom from any person. As stated earlier, P.Ws. 1, 4, 5, 6 and 7 have not supported the case of the prosecution in any manner and were declared as hostile.

19. The crucial evidence in the present case is that of P.W. 8/Mukesh Kumar, the victim boy. His evidence disclose that he was a student of Class 10th in Modern Sainik School, Patliputra Colony, Patna. He testified that on 05.09.1995, he left his house at about 07:15 A.M. in order to attend school, and when he came out of the school



at about 1:10 P.M., met appellant no. 2, who told him that they had to go by a Maruti Van due to rain and he sat in the said vehicle. He further stated that he did not know appellant no. 1 and Ganga, who were also present in the car. His evidence further disclose that initially appellant no. 2 informed him, that they have to go to P.M.C.H. as his mother had met with an accident. Thereafter, the Maruti car proceeded towards P.M.C.H. and further stopped for a while near G.P.O. Golambar. He was then informed that they have to go to Hajipur, as the operation would be conducted there. However, instead of going to Hajipur, he was taken to Muzaffarpur. When P.W. 8 questioned about it, appellant no. 2 informed him that his mother and her business partner were kidnapped, and therefore, they have to go to Bokaro. The evidence of P.W. 8 further disclose that instead of returning to Patna, they all went to Siliguri by bus and stayed in a hotel. On the next day, they brought him back to Muzaffarpur. During this period, Ganga left for a friend's place, after paying



the hotel bill and did not return the next day. Thereafter, appellant no. 2 left the place and returned to the hotel in the evening along with his cousin, Ranjeet. On 09.09.1995, they all went to Ranjeet's house, and on the following day, Ranjeet's father brought the victim to Birju's house at Sonapur. From there, the grandmother of Birju (appellant no. 2) brought him to his house at Patna.

20. P.W. 8 specifically testified that he was kidnapped for the purpose of extorting a ransom of Rs. 1.5 lakhs, and a letter was sent by Birju/appellant no.2 to his mother in this regard. When the said letter, marked for identification as 'X', was confronted to him, he stated that he could not identify the handwriting. The statement of P.W. 8 under Section 164 of the Cr.P.C. was recorded by the Judicial Magistrate, and his signature thereon was marked as Exhibit 2.

21. In cross-examination, P.W. 8 testified that he knew appellant no. 2 since his childhood and he has been visiting his house since then. He



further stated that he voluntarily sat in the Maruti van, after coming out of the school, and that the accused persons never misbehaved with him during the three days of his stay at Muzaffarpur and Siliguri. He also testified that he did not inform anyone that he was taken away with any malicious intention.

22. Except for the said witness, there is no other evidence on record to prove that the appellants kidnapped the victim/P.W. 8. The victim himself stated before the Court that he voluntarily went with appellant no. 2 from Patna to Muzaffarpur and thereafter to Siliguri, and later returned to Sonapur to the house of appellant no. 2, from where the grandmother of appellant no. 2 brought him back to his house.

23. It is relevant to mention that the charge was framed against both the appellants under Section 364(A) of the Indian Penal Code. Section 364(A) of the I.P.C. reads as follows:

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 organization 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.

24. However, the trial Court failed to establish the case for the offence punishable under Section 364(A) and, therefore, convicted both the appellants for the offences punishable under Sections 363 r/w 34 of the I.P.C., as well as Sections 365 r/w 34 of the I.P.C., and sentenced them as stated hereinabove.

25. In order to prove the guilt of the appellants, the prosecution must have established



that the victim was kidnapped from the lawful guardianship of P.Ws. 2 and 3.

26. Sections 361, 363 and 365 of the Indian penal Code read as follows:-

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.*

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.*

365. Kidnapping or abducting with intent secretly and wrongfully to confine person. - *Whoever kidnaps or*



abducts any person with intent to cause that person to be secretly and wrongfully confined, 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. In order to attract the provisions of Section 361 of the I.P.C., it is for the prosecution to prove that P.W. 8 was taken away from the lawful guardianship of P.Ws. 2 and 3, and he was a minor aged below 16 years or a person of unsound mind. The prosecution has not placed any material on record to prove that P.W. 8 was a minor as on the date of the incident, i.e., 05.09.1995, or that he was a person of unsound mind. In the absence of any cogent evidence, it was not proper for the trial Court to convict the appellants for the offences punishable under Sections 363 r/w 34 of the I.P.C. Admittedly, P.W. 8 stated that he was student of Class 10th, in Modern Sainik School, Patliputra Colony, Patna. However, the prosecution has not placed on record birth certificate or any educational certificate of P.W. 8 to establish that he



was a minor as on the date of the alleged occurrence. In the absence of proof of age of the victim, the conviction recorded by the trial Court cannot be sustained.

28. It is also pertinent to mention that the evidence of P.W. 8 was recorded by the trial Court on 09.01.2002. The deposition form disclose that the age of the victim/P.W. 8 was recorded as 29 years as on 02.01.2003, and that he was a third-year B.A. student at A.N. College, Patna. If the said document is taken into consideration, the age of P.W. 8 would be 29 years as on 09.01.2003, as declared by the victim himself. The alleged incident took place on 05.09.1995. If eight years are deducted from his age, i.e., 29-8, he would be about 21 years of age as on the date of the incident/offence. Therefore, this Court finds that the victim was not a minor as on the date of the occurrence, and accordingly, the conviction under Sections 363 r/w 34 of the I.P.C. is not sustainable. If at all the conviction has to be sustained under Section 365 of the I.P.C., it is for the prosecution to



establish that the victim was kidnapped or abducted with the intent to cause him to be secretly or wrongfully confined. There is no evidence on record to show that the victim was either secretly or wrongfully confined at Muzaffarpur, Siliguri, or Patna. In the absence of such evidence, the trial Court ought not to have convicted the appellants for the offence punishable under Section 365 of the I.P.C.

29. In order to support his case, the Learned counsel for the appellant relied upon the citation of Hon'ble Division Bench of this Court in **Cr. APP (DB) No. 1449 of 2018**, reported in **2023 4 PLJR 4659**, which reads as follows:-

25. *In the case of **Shivaji Saha Brao Bobade Vs the State of Maharashtra** reported in **(1973) 2 SCC 793**, echoing the view expressed in the case of Tara Singh (supra), the Supreme Court opined that great care is expected of Sessions Judges who try grave cases to collect every incriminating*



circumstance and put it to the accused.

26. In the case of Asraf Ali Vs State of Assam reported in (2008) 16 SCC 328, the Supreme Court explained the object of Section 313 of the Cr.P.C. by stating that its object is to establish a direct dialogue between the Court and the accused. If a point in the evidence is important against the accused, and the conviction is intended to be based upon it, it is right and proper that the accused should be questioned about the matter and be given an opportunity of explaining it.

27. In a recent decision of the Supreme Court in case of Raj Kumar Vs State (NCT of Delhi) reported in 2023 SCC OnLine SC 609, after having noticed the precedents has summarized the law pertaining to the scope of Section 313 of the Cr.P.C. in paragraph 17 as under:

“17. The law consistently laid down by this Court can be summarized as under:

(i) It is the duty of



the Trial Court to put each material circumstance appearing in the evidence against the accused specifically, distinctively and separately. The material circumstance means the circumstance or the material on the basis of which the prosecution is seeking his conviction;

(ii) The object of examination of the accused under Section 313 is to enable the accused to explain any circumstance appearing against him in the evidence;

(iii) The Court must ordinarily eschew material circumstances not put to the accused from consideration while dealing with the case of the particular accused;

(iv) The failure to put material circumstances to the accused amounts to a serious irregularity. It will vitiate the trial if it is shown to have prejudiced the accused;

(v) If any irregularity in putting the material circumstance to the accused does not result in failure of justice, it becomes a curable defect.



However, while deciding whether the defect can be cured, one of the considerations will be the passage of time from the date of the incident;

(vi) In case such irregularity is curable, even the appellate court can question the accused on the material circumstance which is not put to him; and

(vii) In a given case, the case can be remanded to the Trial Court from the stage of recording the supplementary statement of the concerned accused under Section 313 of CrPC.

(viii) While deciding the question whether prejudice has been caused to the accused because of the omission, the delay in raising the contention is only one of the several factors to be considered."

28. In the present case, the only question which was put to the appellant by the trial court was as what he had to say, there being evidence that he had kidnapped the informant's brother. No incriminating circumstance was explained to him based on which the said



question was put. No question pertaining to evidence of demand of ransom was put to the appellant. We are of the considered view, on analysis of the evidence on adduced at the trial in the present case, that the failure on the part of the trial court to put material circumstances to the appellant resulted into miscarriage of justice, which occasioned prejudice to the appellant's case. After having discussed the evidence adduced at the trial as above, we do not find it to be a fit case to be remanded to the trial court from the stage of recording supplementary statement under Section 313 of the Cr.P.C..

30. It is pertinent to mention that from the evidence on record, it is manifest that there has not been proper compliance of the requirement of Section 313 of the Cr.P.C. The trial Court examined the appellants Under Section 281 of the Cr.P.C. instead of 313 of Cr.P.C. and the questions which were put by the trial Court to the appellants, are utterly big. The significance of substantial compliance of requirements of the 313 Cr.P.C., has been reiterated in catena of the Supreme Court's Judgment, the foremost being the



case of **Tara Singh Vs. State (AIR 1951 SC 441)**. In the said case, the Hon'ble Apex Court had the occasion to deal with Section 342 of Cr.P.C. It is noteworthy that Section 313 of Cr.P.C. and Section 342 of Cr.P.C. of 1898 are in *pari materia*. Relying on the privy council decision in the case of **Dwarkanath Verma Vs. Emperor (AIR 1933 PC 134)**, the Hon'ble Apex Court has laid down in the case of Tara Singh (Supra) that if a point in the evidence is considered important against the accused and the conviction is intended to be based upon it, then it is right and proper that the accused should be questioned, about the matter and be given an opportunity of explaining it, if he so desires. The Hon'ble Apex court noted that it was an important and salutary provision which cannot be permitted to be slurred over.

31. The Learned counsel for the appellants argued that in the said case, the use of a mobile phone for making a demand for ransom, allegedly recovered from the possession of the appellants, was not proved by the prosecution. He



further contended that the alleged letter demanding ransom was also not proved. Therefore, the said judgment squarely applies to the facts of the present case, and the impugned findings of conviction recorded by the trial Court requires interference of this Court.

32. On perusal of the entire evidence on record, it transpires that neither the informant nor his wife has any suspicion against the appellants, except receiving a letter for ransom demand through an unknown person. However, the prosecution has miserably failed to prove that the said letter was authored or sent by the appellants. Furthermore, the evidence of the victim/P.W. 8 itself disclose that he voluntarily went with appellant no. 2 in a Maruti car to P.M.C.H., Muzaffarpur and Siliguri, and that he was never wrongfully confined by any of them. Surprisingly, the evidence of the Investigating Officer has not been brought on record.

33. Taking into consideration the entire material available on record, this Court is of the



view that the prosecution has failed to prove the offences for which the appellants were put on trial, as well as the conviction and sentence imposed against them, beyond all reasonable doubt. There is no evidence on record to establish that the appellants had taken or enticed the victim out of the lawful guardianship, so as to attract punishment under Section 363 of the I.P.C. Once the prosecution fails to establish the case of kidnapping or abduction from lawful guardianship or wrongful confinement, the conviction under Sections 363 and 365 of the I.P.C. cannot be sustained, keeping within the meaning of Section 361 of the I.P.C. which includes, the offences punishable under Sections 363 and 365 of I.P.C.

34. Therefore, the impugned findings of conviction recorded by the trial Court deserve interference, and the appellants are entitled to be acquitted by giving them the benefit of doubt.

35. Accordingly, the judgment of conviction and order of sentence dated 21.09.2004 passed by the the Learned Additional Sessions



Judge, FTC-V, Patna, in Sessions Trial No. 776 of 1996, arising out of Patliputra P.S. Case No. 167 of 1995, are hereby set aside and the appellants are acquitted for the offences punishable under Section 363 r/w 34 of the I.P.C. and Section 365 r/w 34 of the I.P.C.

36. In result, the appeal is allowed.

37. The record reveals that appellants were released on bail by this Court vide order dated 08.12.2004. Hence, the bail bonds of the appellants shall stand cancelled.

(G. Anupama Chakravarthy, J)

AMANDEEP/-

AFR/NAFR	NAFR
CAV DATE	N/A
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