

In the 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:-

“90. 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:

"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 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."

91. 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.

92. 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."

Distinguished in 2021 SCeJ 934

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”. 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.