



2026:AHC:21885

HIGH COURT OF JUDICATURE AT ALLAHABAD
CRIMINAL APPEAL No. - 2435 of 1984

Ram Narain And Others

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	: Pankaj Kumar Shukla, Amit Daga, Jitendra Kumar Ravat, K.N.Saksena
Counsel for Respondent(s)	: A.G.A.

Court No. - 39

AFR

Judgement Reserved on 21.01.2026

Judgement Delivered on 02.02.2026

HON'BLE ANISH KUMAR GUPTA, J.

1. Heard Sri Amit Daga, learned Senior Advocate assisted by Sri Bihaan Pandey, learned counsel for appellant no.2; Sri Jitendra Kumar Rawat, learned counsel for appellant no.3; Sri Bhriguram Ji Pandey, learned counsel for appellant no.5; Sri Pankaj Kumar Shukla, learned Amicus Curiae on behalf of appellant no.4; and Sri D.P.S. Chauhan, learned AGA for the State.

2. The instant criminal appeal has been filed by the appellants against the judgment and order dated 21.08.1984 passed by the First Additional Sessions Judge, Jhansi in Sessions Trial No. 107 of 1982 (State of U.P. vs. Ram Narain and 11 others), whereby all the appellants herein were convicted for the offence under Section 365 I.P.C. During the pendency of the instant appeal the appellant no.1, namely Ram Narain, died and his appeal was abated vide order dated 19.02.2018.

3. The brief facts in the instant case are that on 09.06.1981 at 2:30 PM, the informant Raja Ram lodged an F.I.R. at Police Station- Kotwali, District- Jhansi, stating therein the informant and his son Govind Ram was implicated in a case of murder and were arrested. On 04.06.1981, the informant Raja Ram was released from the jail after the bail was granted by the High Court. When after release from the jail he reached at his house situated at New Basti, Jhansi, then he met his son Shiv Narain, who was aged about 19 years and one Kammad Kachi, the appellant no.5

herein at his house. The appellant no.5, Kammad Kachi informed that Ram Narain etc. who have falsely implicated the informant and his son are regretting their action and he has asked him to come to the village so that he can get a settlement of dispute so that son Govind Ram may also be released on bail. When the informant heard the aforesaid suggestion of the appellant no.5, then he reacted that since they are having too much enmity with the informant and his family members, therefore, they are trying to do some wrong things by inducing and cheating them. Then, he cautioned his son Shiv Narain not to go to the village.

4. On 05.06.1981, after attending the court of District Magistrate, he along with his other relatives went to the village- Datavli and when he came on 07.06.1981 at his house in New Basti, Jhansi, then, he came to know that his son Shiv Narain is not in the house. Then, he inquired about him in the neighbourhood. On inquiry, one Bhagirath and Lakhan Singh has informed that on Saturday 06.06.1981 at around 2:00 PM, they have seen Shiv Narain in the company of Kammod (appellant no.5) near Motor Stand as he was going towards Kachahri Chauraha. When they have inquired from them, then Shiv Narain told them that Kammod (appellant no.5) herein was carrying him to the village for settlement of the case. At that time, Shiv Narain was having cycle and was also having watch on his wrist. Next day, he went to the village to find out the whereabouts of Shiv Narain but he could not get any clue. Then, he continued to search for his son in various places. When he could not find him then came back to Jhansi at around 8:30 PM, hoping that he would have reached Jhansi. However, he has not reached their. Thereupon, the informant has expressed his apprehension that since he was having enmity with Ram Narain, Bhagwat, Gopal Das, Darale, they might have conspired with Kammad and would have called Shiv Narain to the village and since the informant and his elder son was in jail, Shiv Narain, victim son went to the village. Then, he apprehended that the aforesaid accused persons in collusion with other accused persons would have killed the victim, Shiv Narain. The matter be investigated. On the aforesaid information the F.I.R. was registered under Section 364 I.P.C. against Ram Narain, Bhagwat, Gopal Das, Darale.

5. Subsequently, on 24.09.1981, one Ram Swaroop @ Bhunni s/o Mari Mate deposed under Section 164 Cr.P.C. before the Judicial Magistrate, 1st Class, Moth, Jhansi, making out his confessional statement wherein he stated that about three months ago he was in the house of Prabhu, who was resident of his village. Prabhu was also with him at that time. Ram Narain came their and he asked them to accompany him. Thereupon, the

witness, Ram Swaroop and Prabhu taken their latthi and accompanied Ram Narain. At that time, it was 8-9 PM. They reached near the canal towards village, where they found Bhole @ Lallu, Bhagwat and Jagdish alongwith three other persons who was not known to the witness. Bhole was having ballam, Jagdish was having axes, Bhagwat was having an open knife. Out of the three unknown persons, one was having a countrymade pistol, Ram Narain was having lathi and torch. All of them have gone to the horticulture field of Kammod. Ram Narain had flashed torch from the distance then there came Kammod and Shiv Narain was sitting there. Shiv Narain tried to ran away after seeing them. Then, Kammod had caught hold of his hand and all of them have reached their. Shiv Narain tried to shout, then Jagdish has closed his mouth by putting his hand. Thereafter, they carried out Shiv Narain in the fields of the village near the well where Jagdish and Lallu have thrown Shiv Narain in the well. One hand of Shiv Narain was caught hold by Bhagwat and another hand was caught hold by Prabhu and one leg was caught hold by Lallu and another hand was caught hold by Ram Narain and Jagdish had assaulted with an axe on the neck of Shiv Narain due to which half of the neck was cut. He died on the spot. At that time, he was standing along with the accused persons. Jagdish and other accused persons have thrown the dead body as well as the axe in the said well and one spear was also thrown in the well. Thereafter, Ram Narain and Jagdish have gone towards Samthar and the other three persons along with them have also gone. Jagdish has instructed the witness as well as Prabhu and Kammod to go to their homes and around 12:00 P.M. in the night they have came back to their house. The next day evening, around 6-7 PM, Ram Narain came to him and he called Prabhu and told that dead body is floating on the well, that is required to be abolished. Then, the witness went to the house of Prabhu but he did not meet him there. Along with Ram Narain, Kammod also came to their house. Thereafter, all the three persons went near the well where the cart of Darale was there. Near the well, Darale, Dhan Singh, Badri, Gopal Das, Govind, Jagdish, Bhole @ Lallu and Bhagwat were standing. Lallu and Jagdish went down in the well and brought out the dead body from the well. The dead body was kept in the bullock cart of Darale. Gopal Das has told him that he has brought the petrol and the blood which was lying on the well, on that Gopal Das has thrown out the petrol and ablazed.

6. After the fire was subsidized they have carried out the dead body on the bullock cart towards the west of the well. When they reached near the canal of Samthar, thereafter they went to Wajita drainage. After pulling

out the dead body from the cart, Ram Narain had went to Wajita, where Brij Kishor, Kaushal Kishor and Gauri Shankar met him in the house of Rajendra Singh. Rajendra Singh was also present there. Ram Narain has asked Rajendra Singh to make the arrangement of the woods. Thereupon, Rajendra Singh has brought the woods along with his servant and Brij Kishor, Gauri Shanker and Kaushal Kishor. Rajendra Singh was having single barrel gun; Ram Narain Singh having double barrel gun; and Govindi was having the gun. All of them have ablazed the dead body near Wajita drainage. Prabhu is the childhood friend of this witness and his relative that is why Prabhu has saved him in his statement. He is associated with Gopal Das and in the offence of murder of Rambabu, the son of Gopal Das, Govind Ram and Rajaram were the accused that is why they have killed Shiv Narain son of Rajaram. After recording the aforesaid statements the police has conducted the investigation and thereupon recovered various incriminating material and thereupon submitted charge-sheet on 22.10.1981.

7. On submission of the charge-sheet the case was committed to the Sessions Court for trial. On 28.04.1981, the learned Sessions Judge framed various charges against the accused persons in four sets. First set of charge was leveled against Ram Narain, Bhagwat, Gopal Das, Darale, Kammod, Jagdish, Dhan Singh, Badri, Govindi and Ramswaroop. The first set of charge includes the charges under Section 147 as well as under Section 149/201 IPC. The second set of charge was framed against Ram Narain, Bhagwat, Prabhu, Jagdish and Ramswaroop for the offences under Sections 147, 149 read with Section 302 IPC and 149 read with Section 201 IPC. The third set of charge was framed against Kammod, Bhagwat, Prabhu, Ramswaroop and Darale under Section 147 IPC as well as 364 IPC and under Section 149, 302 IPC as well as for the offences under Section 149 and 201 IPC. The fourth set of charge was framed against Jagdish for the offence under Section 148, 302 IPC as well as under Section 149, 201 IPC. All the accused persons denied the charges and claimed trial.

8. In support of its case, the prosecution has examined the informant as PW1; one Babu Lal as PW2, who is the witness of the fact that he has seen the victim Shiv Narain in the company of Kammod and Shiv Narain has informed that he was going to the village along with Kammod to settle the case; PW3 is Babu Khan, who has last seen the victim Shiv Narain in the company of Kammod, Bhagwat, Ram Narain, Jagdish, Prabhu and Bhole who were talking to each other and had gone towards the field on the side of the Datavali; Gabdoo was examined as PW4 who

has denied the prosecution story and did not affirm his statement under Section 161 Cr.P.C. He was declared hostile; PW5 is Laxman who has deposed that Prabhu was working for few days with him and one day said Prabhu was very sad, he has asked him the cause thereof, then he has disclosed that he has committed a murder. Immediately thereafter, this person has relieved Prabhu. Thus, he is the witness of the extra judicial confession made by the accused appellant no. 3, Prabhu with regard to the murder of the victim; PW6 is Siya Ram who deposed that Prabhu was working with PW5, Laxman and subsequently he came to know that he was arrested. This witness was also declared hostile; PW7 is Narain Das who has deposed that he has seen Shiv Narain in the court complex while he was sitting in a bus. This witness was also declared hostile.

9. PW8 is Bhagirath who has deposed that on 06.06.1981, around 2:00 PM he has seen Shiv Narain in the company of accused Kammod and he has also stated that he is going along with Kammod for settlement of dispute. PW9 Vijendra Pal, Head Constable who had registered the F.I.R. and PW10, Sri P.D. Atal is the initial Investigating Officer, who submits that he had investigated the case upto 02.07.1981 and thereafter since he was transferred, further investigation was carried out by SHO Bhullan Ram. SHO Bhullan Ram has not been examined in the instant case. PW11 is Raunak Hussain who has recorded the 164 Cr.P.C. of accused Ramswaroop. After the prosecution witnesses were examined the statement of accused persons were recorded. They denied all the allegations made against them. Thereupon, vide impugned judgement and order dated 21.08.1984 the trial court has acquitted all the accused persons for all other offences except the appellants herein, who were convicted for the offence under Section 365 I.P.C. and sentenced to undergo three years rigorous imprisonment. Being aggrieved by the same, the instant appeal has been filed.

10. Learned Senior Counsel appearing for the appellant no.2, Sri Amit Daga has vehemently submitted that in the instant case though the appellant no.2 has been named in the F.I.R., however, no specific role has been assigned against the appellant and the F.I.R. was filed only on the basis of the apprehension. He has vehemently argued that the trial court has not framed any charges against the appellant no.2 as well as the appellant nos. 1, 3 and 4 herein for the offence under Section 365 I.P.C. or 364 I.P.C. and submitted that in the first set of the charge, the charge is only for the offence under Section 147 as well as the 149 read with Section 201 I.P.C. for which all the appellants herein have already been acquitted. For the second set of the charges, framed against the appellant

nos.1, 2, 3 and 4 and acquitted accused Ramswaroop was for the offence under Sections 147, 149/302, 149/201 I.P.C. For those offence also, all the appellants herein were acquitted. Relying upon the third set of the charge framed against the appellant nos.5, 2, 3, and 4 and two other acquitted accused persons, learned Senior Counsel submits that the aforesaid third set of the charge is also in four parts. In first part, the charge was framed under Section 147 I.P.C. for which all the accused persons have already been acquitted. For the third and fourth charge, under Section 149/302 I.P.C. as well as 149/201 I.P.C., for the same also, all the accused persons have been acquitted. So far as the second charge in the third set of the charge is concerned, it is submitted by learned Senior Counsel for the appellant that it was framed only against appellant no.5 and not against any other accused person, which was framed for the offences under Section 364 I.P.C. Therefore, he submits that since there was no charge under Section 364 or 365 I.P.C. against the appellant no.2, he cannot be convicted for the offence under Section 365 I.P.C. It is further submitted by learned Senior Counsel for the appellant relying upon the statement under Section 313 Cr.P.C., specifically the question no.4, that even according to the aforesaid question put to the appellant, the witness Narottam and Babu Khan have seen the victim Shiv Narain in the company of Kammod as well as Ram Narain, Bhagwat, Bhole. However, in the aforesaid question, it has been categorically mentioned that Kammod and Shiv Narain have went towards west and Ram Narain, Bhagwat, Bhole have gone towards village Datavali. Therefore, even as per the last seen theory, there is no question put to the appellants that the victim was last seen in the company of the appellants herein except the appellant no.5.

11. Learned Senior Counsel for the appellant submits that there are three key witnesses in the instant case on the part of the prosecution, namely PW1, Rajaram, PW2 Babulal and PW3 Babu Khan. So far as the statement of co-accused Ramswaroop, which was recorded under Section 164 Cr.P.C. is concerned, the same has already been discarded by the trial court, therefore, the reliance cannot be placed upon the said statement. Otherwise also, for the other offences, the appellants have already been acquitted. Thus, learned counsel for the appellants submits that so far as the offence under Section 365 I.P.C. is concerned, there has to be abduction by an accused and kidnapping and thereupon a wrongful confinement of the victim. Since, there is no evidence available on record with regard to any wrongful confinement on the part of the accused appellants herein, the trial court has erred in convicting the appellants

herein under Section 365. The corpus of the victim has not been recovered dead or alive by the prosecution. All the key witnesses do not depose anything against the appellants that the appellants have wrongly confined the victim at any stage.

12. Learned Senior Counsel has further submitted that the statement under Section 313 Cr.P.C. is not mere an empty formality, rather the proper incriminating material has to be put to the accused persons, if all the incriminating material on the basis of which has been convicted has not been put to him in the 313 Cr.P.C. statement, then his conviction becomes erroneous and cannot be sustained. There is no material available on record nor any question has been put to the appellant with regard to the wrongful confinement of the victim. Thus, learned Senior Counsel for the appellants submits that the impugned judgement and order convicting the appellant herein for the offence under Section 365 I.P.C. is not sustainable in law, therefore, he seeks quashing/setting-aside of the impugned judgement and order dated 21.08.1984 and submits that the appellants herein are entitled to be acquitted for the offence under Section 365 I.P.C. as well.

13. Sri Jitendra Kumar Rawat, learned counsel appearing for the appellant no.3, Prabhu has also adopted the submissions so made by Sri Amit Daga, learned Senior Counsel for the appellant no.2.

14. Sri Pankaj Kumar Shukla, learned Amicus Curiae appearing on behalf of the appellant no.4 has relied upon the judgements of Apex Court in ***Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116, Kali Ram v. State of H.P., (1973) 2 SCC 808, Ramreddy Rajesh Khanna Reddy v. State of A.P., (2006) 10 SCC 172, Dilshad vs. State of Uttarakhand : 2013 SCC Online Utt 1303 and State of Rajasthan vs. Kashi Ram : (2006) 12 SCC 254*** had submitted that an accused cannot be convicted for the offence under Section 365 unless the victim of such offence is recovered and has made statement against the accused persons with regard to the factum of wrong confinement against his wishes. Since, in the instant case the corpus of the victim either dead or alive has not been recovered, the conviction of the appellants under Section 365 is unsustainable in law, therefore, he seeks acquittal of the appellants herein.

15. Per contra, learned A.G.A. for the State submits that in the instant case the victim Shiv Narain was induced by appellant no. 5, Kammod at the instigation of the other appellants herein as they were having enmity

with the informant as well as the son Shiv Narain, the victim herein. Therefore, appellants herein had sufficient motive to commit the offence as alleged against them. The entire story in detail has been narrated by the co-accused Ramswaroop in his confessional statement recorded under Section 164 Cr.P.C. before the Magistrate.

16. Learned A.G.A. further submits that there is categorical deposition by PW3 that he has last seen the victim in the company of the appellants herein, thereafter, he could not be traced out till date and further story has been narrated by the co-accused Ramswaroop in his 164 Cr.P.C. statement, which explains that it were the accused persons herein who have wrongfully confined, killed the victim and thereupon have ablazed the dead body to wipe out the evidence of the death of the victim. The trial court has erroneously discarded the deposition under Section 164 Cr.P.C. by accused Ramswaroop and wrongly acquitted the appellants herein. The appellants herein had sufficient motive to cause the incident as narrated by the prosecution. However, for want of sufficient evidence, the trial court has acquitted the accused persons for the other offences under Sections 147, 148, 149/302, 149/201 I.P.C. and have convicted only five of the appellants herein for the offence under Section 365 I.P.C. Therefore, learned A.G.A. submits that no interference is called for in the matter. The nature of offence is heinous. The accused persons not only brutally killed, but have also wiped out the evidence by setting the dead body ablazed. Thus, no interference is called for in the impugned judgment.

17. Having heard the rival submissions so made by learned counsel for the parties, this Court has carefully gone through the record of the case.

18. The brief facts of the case have already been noted herein above. There are only three key witnesses of the incident as led by the prosecution namely PW1 Rajaram, PW2 Babulal and PW3 Babu Khan. Therefore, proceeding further, it would be appropriate to closely scrutinize the depositions of the aforesaid three witnesses. The PW1 Rajaram has supported the narration of the F.I.R. to the effect that he and his son Govind Ram were falsely implicated in a murder case. Thereupon, having been granted bail by the High Court, he was released from the jail on 04.06.1981 and he came to the house at New Basti, Jhansi where his younger son Shiv Narain as well as the appellant no. 5 was present. Shiv Narain has told him that appellant no. 5, Kammod was telling him that Ram Narain etc. who have falsely implicated the informant as well as the elder son of the informant are regretting their

conduct and they want to settle the dispute so that the elder son of the informant namely Govind Ram may also be released on bail. The appellant no. 5 Kammod has also told the same thing to the informant. Thereupon, Shiv Narain, the victim, has told the informant that those persons are having enmity, therefore informant should not go with them.

19. On 05.06.1981, he went to attend the date in the Collectorate and thereafter he had gone to his village and returned on 07.06.1981 to his house at Jhansi where he came to know that Shiv Narain is missing from the house. Then, he inquired in the neighborhood. Then, Bhagirath and Lakhan had told him that on 06.06.1981 Shiv Narain has gone along with Kammod and he has seen him near Kachahri Crossing. On inquiry he has told him that he is going to settle the dispute. This witness has further deposed that he had waited till 7th and thereupon, on 8th he has went to the village for searching his son and he has also searched his son Shiv Narain in various relations and when he could not trace out him, he came on 09.06.1981 at 9:00 AM in the morning to Jhansi and thereupon he got scribed the report from Har Govind and thereupon had put his signatures on the report upon which the F.I.R. was registered.

20. In cross-examination, this witness has deposed that he was having enmity with appellant no.1 Ram Narain regarding the consolidation matters. However, he was not having any enmity with the appellant no.5, Kammod. He has denied the suggestion that in 1979 also a false case was lodged by his elder son Govind Ram against Ram Narain with regard to kidnapping of the informant. He has also shown his ignorance with regard to any proceedings carried out against his elder son under Section 211 I.P.C. He has further denied the suggestion that his son has neither been abducted nor killed. This witness was further called to prove that carbon copy of the F.I.R., as the original report as well as the F.I.R. was missing. In the cross-examination he admits that on 06.06.1981 he was not in Jhansi and he has met witness Bhagirath on 05.06.1981. Then he said, on 06.06.1981, he met with Bhagirath, again denied that he has met with Bhagirath on 06.06.1981. Again, at 5:00 PM on 05.06.1981 he had met Bhagirath. On 05.06.1981 Bhagirath has not told anything to him. He further stated that when he was searching his son Shiv Narain, then Babulal has told him that on 07.06.1981 he has seen Shiv Narain near Jhansi Bus Stand. However, he has shown his ignorance why the name of witness Babulal has not been mentioned in his written report.

21. The PW2 in his statement has stated that on 06.06.1981 he was there at the bus stand at Jhansi around 2:00 PM. He has seen the victim Shiv

Narain and Kammod. He had asked Shiv Narain where he is going and Shiv Narain has told him that he is going to settle the dispute with Ram Narain along with Kammod. Shiv Narain was having cycle and was wearing the watch on his wrist. In the cross-examination, he admits that he was previously known to the victim Shiv Narain and also Govind Ram who was residing in the neighborhood of his house. He further states that his statement was recorded on 26.07.1981 at PS- Samthar as the constable from PS- Samthar has come to call him and has told him that the sub-inspector from Jhansi had come to record his statement. He has told to the sub-inspector that Shiv Narain was having the cycle and wrist-watch on his hand. However, if the aforesaid is not mentioned in his statement, then he cannot tell the reasons for the same.

22. PW3 Babu Khan has deposed that around three years back he had gone near culvert at Pandokhar Road for defecation around 5:30 PM. Narottam was coming from Pandokhar. He has asked the matchbox for lighting his cigar/bidi. Thereafter, he was talking to him. Thereupon, he has seen that accused Kammod and Shiv Narain came from the eastern side. Shiv Narain was having cycle and a wrist watch on his hand, who was coming from the side of the horticultural field. Ram Narain, Bhagwat, Jagdish, Prabhu and Bhole came out and thereafter they started talking to Shiv Narain. Shiv Narain and other persons have gone towards the horticulture field towards Datavali while talking to each other. Thereafter, he has come back. Since, thereafter he has not seen Shiv Narain. In his cross-examination he has stated that the horticulture field is around hundred steps away from the culvert. Shiv Narain and Kammod had come to the culvert. Thereafter, Ram Narain etc. have come out from the aforesaid horticulture field. Shiv Narain and Kammod were ahead and rest of the persons were around 25 feet behind them. Thereafter, after some time all of them have gathered ahead and while talking to each other they have went towards the field on the north side.

23. Thus, from the statement of the aforesaid key witnesses, the case of the prosecution is that on 06.06.1981, the victim, Shiv Narain, had gone along with Kammod to settle the dispute with Ram Narain. The PW2, Babulal, has seen the victim in the company of appellant no. 5 at Jhansi and on query, he has also confirmed that he was going towards the village to settle the dispute with Ram Narain and others and PW3 has deposed that he has seen the victim in the company of appellant no. 5 and the rest of the accused persons were coming from behind, who were 25 steps behind Kammod and Shiv Narain, and subsequently after some distance, they have gathered and while talking to each other, they have went

towards the agricultural field on the North side from the culvert near canal. Since thereafter, he has not seen the victim Shiv Narain.

24. It is also apparent from the aforesaid evidence that the neither the corpus of the victim has not been recovered alive or dead. There is no evidence that any remains of the dead body was found or which correlated with the corpus of the victim. There is no evidence on record to suggest that any force was being used by any of the accused persons/appellants herein against the victim which could suggest that there was any wrongful confinement of the victim on the part of either of the accused persons. The statement of PW2 and PW3 only suggest that the victim was seen in the company of the accused persons, but there is no iota of evidence to suggest that there was any wrongful confinement on the part of the appellants herein. To find out the ingredients of the offence under Section 365, it is relevant to take note of the definition of the offence of kidnapping under Section 359 and abduction under Section 362 and the definition of offence under Section 365, which reads as under:

Section 359, 362 and 365

"359. Kidnapping.- Kidnapping is of two kinds: kidnapping from 1[India], and kidnapping from lawful guardianship.

362. Abduction.- Whoever by force compels, or by any deceitful means induces, any person to go from any place, is said to abduct that person.

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."

25. The kidnapping is defined, the kidnapping of a person from lawful guardianship or kidnapping from India. In the instant case, there is no allegation or whisper about the offence of kidnapping in the evidence available on record. So far as abduction is concerned, there is apprehensive evidence of PW1 with regard to the inducement of the victim by appellant no. 5 at the instigation of rest of the appellants due to enmity which may indicate to some extent the offence of abduction through inducement of the victim by appellant no. 5. However, for the

offence under Section 365 IPC, it is necessary for the prosecution to prove something beyond abduction with regard to the wrongful confinement of the victim.

26. In judgement and order dated 09.11.2023 passed in ***Criminal Appeal No. 798 of 2023 (Yakub Khan vs. State of Chattisgarh through Station House Officer, P.S.-AJK, Korba, District-Korba,C.G.)***, relied upon by learned Counsel for the appellant no.5, the Division Bench has observed as under:

"11. The essence of the offence under Section 365 of the IPC embodies an aggravated form of offence of kidnapping as defined in Sections 360 and 361 and of abduction as defined in Section 362 IPC. Section 365 is attracted when the kidnapping or abduction is committed with intent to secretly and wrongfully confine the victim. Section 365 of the IPC lays down that where a person was abducted in order to that he might be held to ransom by his abductors, it was held that this section is applicable. The prosecution must prove:

(i) Kidnapping or abduction by the accused.

(ii) The accused thereby intended that the person kidnapped or abducted should be kept in wrongful or secret confinement.

12. To prove the ingredients of Section 365 of the IPC, it is essential that there should be abduction, if no abduction is there; the offence under Section 365 of the IPC is not made out. To prove charge of wrongful confinement, proof of actual physical restriction is not essential. It is sufficient if the evidence shows that such an impression was produced in the mind of the accused as to create a reasonable apprehension in the mind of the victim. The Intention can be inferred from the subsequent acts and conduct of the kidnapper or abductor."

27. With regard to the wrongful confinement of the victim, the prosecution evidence is totally silent. Therefore, this Court do not find any justification for conviction of the appellants herein for the offence under Section 365 I.P.C. for want of evidence in this regard.

28. From the perusal of the 313 Cr.P.C. statements of the appellants, it is apparent that no specific questions have been put to any of the accused

persons with regard to the incriminating evidence relating to the offence under Section 365 I.P.C. From the perusal of the third set of the charge as framed against the accused persons, specifically the second charge of the third set of charge, from the close scrutiny, it would be apparent that the said charge was framed only against the appellant no. 5, Kammod and not against any other accused persons, while corrections being made with regard to the first and third charge, no correction has been made in the second charge of third set of charges whereby the other accused persons could be included in the second charge. Had there been any intent of the court framing the charge to include other appellants as well, the necessary amendments with regard to the naming of the other accused persons would have been done in the second charge as has been done in the first and third charge.

29. From the perusal of the impugned judgment, it is apparent that the trial court has proceeded on the assumption that the charge under Section 364 was framed against all the appellants herein, whereas as has been noticed herein above, the aforesaid charge under Section 364 was framed only against the appellant no. 5 herein. Thus, the other appellants, namely appellant nos. 1 to 4, have been convicted for the offence under Section 365 without there being any charge for the said purpose and thus without giving them any opportunity to defend the aforesaid charge. So far the other charges are concerned, the appellants have already been acquitted. Thus, for want of any charge framed against the appellants under Section 364 or 365 I.P.C., their conviction under Section 365 is not sustainable, that too without giving any opportunity to defend the aforesaid charge or without putting any incriminating material against them with regard to the aforesaid charge. Otherwise also, this Court has already noticed that there is no incriminating evidence available on record with regard to the wrongful confinement whereby the offence under Section 365 can be said to have been constituted against the appellants herein.

30. From the perusal of the judgements of the Apex Court in ***Sharad Birdhichand Sarda (supra)***, ***Kali Ram (supra)***, ***Ramreddy Rajesh Khanna Reddy (supra)***, ***Dilshad (supra)*** and ***Kashi Ram (supra)***, it is apparent that the Apex Court has categorically held that unless there is recovery of the corpus of the victim and there is categorical statement by such victim that he was wrongly confined by the accused person, the offence under Section 365 I.P.C. cannot be said to have been made out against the appellants herein.

31. In view of the aforesaid, this Court do not find any justifiable reason

for conviction of the appellants herein for the offence under Section 365 I.P.C. Accordingly, the instant appeal is ***allowed*** and all the accused appellants are acquitted of the offence under Section 365 I.P.C. as has been held by the Apex Court.

32. Since, the appellants no.2 to 5 are on bail, their bail bonds are cancelled and sureties are discharged.

33. The original record of the trial court be returned to the trial court to be consigned.

34. This court appreciates the assistance provided by Sri Pankaj Kumar Shukla, Amicus Curiae, who has assisted the Court and for the service rendered by him, an honorarium of Rs. 10,000/- shall be paid to him as per rules.

February 2, 2026
Shubham Arya

(Anish Kumar Gupta,J.)