

Court No. - 78

Case :- GOVERNMENT APPEAL No. - 3111 of 1982

Appellant :- State

Respondent :- Shashi Kant Pandey

Counsel for Appellant :- A.G.A.

Counsel for Respondent :- Mahesh Chand Joshi

Hon'ble Samit Gopal,J.

1. Heard Sri Ajay Singh, learned counsel for the State-Appellant, Sri Chetan Chatterji, learned Panel Lawyer of the High Court Legal Service Committee duly appointed for the accused-respondent no.1 Shashi Kant Pandey and accused-respondent no.3 Savitri Devi and perused the trial court records.
2. The trial court records have been received and paper book of the matter has been prepared which have also been perused.
3. Learned counsel for the State-Appellant has filed compliance affidavit dated 14.11.2022 today in Court which is taken on record.
4. Perusal of the same goes to show that whereabouts of the accused-respondent no.1 Shashi Kant Pandey is not known whereas the accused-respondent no.3 Savitri Devi is not living at the aforesaid address who is 72 years and living with her son and suffering from old age diseases. In view of the same, the non-bailable warrants issued against the accused-respondents vide order dated 14.9.2021 is hereby directed to be kept in abeyance.
5. The present Government Appeal has been preferred by the State-Appellant against the judgment and order dated 8.9.1982 passed by III Additional Sessions Judge, Ghazipur in Sessions Trial No.99 of 1981 (State Vs. Shashi Kant Pandey and 3 others) by which the accused persons were acquitted of the charges levelled against them under Sections 363, 370 IPC.
6. The State has challenged the said judgement by filing the present appeal under Section 378 Cr.P.C. During the pendency of the present appeal, the accused-respondent no.2 Rajeshwar Pandey and accused-respondent no.4 Shyam Lal died and thus their appeal stood dismissed as abated vide order dated 14.09.2021 passed by another Bench of this Court. The present appeal thus survives only against the accused-respondent no.1 Shashi Kant Pandey and accused-respondent no.3 Savitri Devi.

7. The FIR of the present matter was lodged on 29.10.1980 by Prahalad Singh on the basis of an application dated 29.10.1980 given by him to the police of which the scribe was Hiranman Singh, copy of the same has been exhibited as Exb: Ka-1 to the records. The version as mentioned in the said application is that he is a resident of Mohamdabad Sai Tola, Kasba Mohamdabad, Police Station Mohamdabad, District Ghazipur. On 28.10.1980 his son aged about five and half years went to Jagriti Shishu Mandir at Arya Samaj Mandir at 9.30 a.m. for study but did not return back. They were worried about it and searched for the child. During search Mahadev Pandey and Vasudev Rai of the locality met him and told that his child was seen with Smt. Savitri, Rajeshwar Pandey and Shashi Kant Pandey of Mohalla Sai Tola, Kasba Mohamdabad. They were at the railway station Yusufpur and with a diesel train which was going from Chapra to Varanasi went towards Varanasi and were seen. He has suspicion that his child would be sold off. In the meantime he received a memo from the Station Master of railway station Yusufpur from which he came to know that his son has been apprehended at Varanasi Cantt. Railway Station. On the said information he along with his father and other persons reached at Varanasi Cantt. Railway Station by a private jeep and contacted the Station Master and recovered his son from there. Shashi Kant who was taking away his son was also present there. He has come to the police station along with Shashi Kant. His report be thus lodged and action be taken.

8. On the basis of the said application, a FIR was lodged as Case Crime No.229 of 1980 under Sections 363, 370 IPC, Police Station Mohamdabad, District Ghazipur.

9. The matter was investigated and a charge sheet no.111 of 1980 dated 29.11.1980 was submitted against the accused-respondents under Section 363, 370 IPC. The same has been exhibited as Exb: Ka-7 to the records. The Court of the 3rd. Additional Sessions Judge, Ghazipur vide order dated 1.10.1981 framed charges against the accused-respondents for offence under Section 363 IPC.

10. The accused persons were read over the charge who denied the same and claimed to be tried. The accused persons were thus tried by the trial court concerned in which six prosecution witnesses namely Prahlad Singh, the first informant was examined as P.W.1, Mahadev Pandey was examined as P.W.2, Haridwar Singh was examined as P.W.3, Keshav Prasad Gupta was examined as P.W.4, Shambhu Nath Singh, the Investigating Officer was examined as P.W.5, Mahavir Prasad Upadhyay was examined as P.W.6. 9. Chandradeo Pandey step father of Shashi Kant was examined as D.W.1.

11. The accused persons in their statements under Section 313 Cr.P.C. denied the prosecution case.

12. Shashi Kant Pandey disclosed his age as 12 years on 23.8.1982 while giving his statement under Section 313 Cr.P.C. The other three accused persons also denied the prosecution case.

13. The trial court after considering the entire evidence acquitted the accused persons. During investigation, the victim boy was handed over in the custody of his father Prahlad Singh on 29.10.1980. A memo of the same was prepared which is Exb: Ka-2 to the records. Shashi Kant Pandey was produced before the Magistrate concerned who gave his statement under Section 164 Cr.P.C. The same is Exb: Ka-9 to the records. The trial court came to a conclusion that the child taken away from the lawful guardianship has not been established. It further holds that the recovery of the child from the possession of the accused has also not been established and neither the alleged recovery witnesses has been mentioned or examined by the prosecution. It thus acquitted the accused persons of the charges levelled against them.

14. P.W.1 Prahlad Singh is the first informant and father of the victim boy. He states of lodging of the FIR and proves the same. He states in cross-examination that the accused are resident of the same mohalla and live near his house.

15. P.W.2 Mahadev Pandey is an alleged witness who states that he and Vasudev Rai were at the railway station waiting for a train. They saw the accused persons there. They after some time saw the accused Savitri with a child. The child was handed over by Savitri to Shashi Kant. Rajeshwar was also present with them. Later on they went inside the train which was going towards Varanasi and left on it.

16. P.W.3 Haridwar Singh is the uncle of Prahlad Singh. He states of the victim boy going missing and regarding a search being launched. He then states that he went with Prahlad Singh to Varanasi Cantt. Railway Station where they found the child.

17. P.W.4 Keshav Prasad Gupta is the Field Officer of State Bank of India. He states of hearing an announcement on a loudspeaker regarding the child going missing.

18. P.W.5 Shambhu Nath Singh was the S.O. Mohamdabad. He proves the writing of Head Constable who transcribed the Chik FIR. He proves the same. He further states of the investigation being done by him and filing of charge sheet against the accused persons.

19. P.W.6 Mahavir Prasad Upadhyay is the Executive Magistrate. He recorded the statement of accused Shashi Kant Pandey under Section 164 Cr.P.C.

20. D.W.1 Chandradev Pandey is the step father of Shashi Kant who stated that the accused Shashi Kant had joined the company of bad persons in the society and was turned out from the house. He states that Shashi Kant was not his family member.

21. Learned counsel for the State-Appellant submits that the accused persons took away the victim child from the lawful custody of the first informant which gets fortified from the fact that the child was apprehended along with accused Shashi Kant at Varanasi Cantt. Railway Station and the accused Shashi Kant was also detained. He was handed over to the first informant and he was then produced at the police station. It is submitted that the same would go to show that the child was taken away from the lawful guardianship of his parents. The child was aged about five and half years. It is submitted that the trial court has without appreciating the evidence of the witnesses in their true perspective passed the impugned judgement and order by not considering the fact that the child was recovered from the possession of the accused persons. It is submitted that the first informant had received a memo from the Station Master of Yusufpur Railway Station from which he came to know that his child is at Varanasi Cantt. Railway Station. He went along with other persons and found his child there who was handed over in his custody and memo of the same was prepared. It is submitted that the witnesses produced before the trial court have supported the prosecution case in full. It is submitted that the statement of the accused-respondent Shashi Kant Pandey was recorded under Section 164 Cr.P.C. who states of committing offence which needs to be considered as was not considered effectively by the trial court. Looking to the said discrepancy, the view taken by the trial court deserves to be set-aside and the surviving accused-respondents deserves to be convicted and the present appeal be allowed.

22. Per contra, learned counsel for the accused-respondent nos.1 and 3 opposed the arguments as raised and appeal and submitted that the view taken by the trial court is a probable view. The victim was not produced before the trial court and examined. There is nothing on record to show as to why his evidence was with-held by the prosecution, as such an adverse inference can be drawn easily against the prosecution for withholding crucial and important evidence. Further the trial court has taken a view which cannot be said to be perverse and totally out of record. The present appeal arises out of a judgement and order of acquittal and if the view taken by the trial court is one of the possible views then the view in favour of the accused needs to be taken. The accused-respondent Shashi Kant Pandey himself was a child aged about 12 years. The said age has been disclosed by him in his statement under Section 313 Cr.P.C. on 22.5.1982 which has not been disputed by the trial court. There is no finding contrary to it. The trial court if would have found the said age to be incorrect would have given its opinion regarding it in view of the General Rules (Criminal). Even the fact that the said accused is a child aged about 12 years has been mentioned in the judgement and order itself. Said accused was extended the benefit of doubt and as such was acquitted. There is nothing credible which

would call upon the Court to take a view that the finding of the trial court was so much perverse that that needed to be reverse and the accused needed to be convicted. The appeal is devoid of any merit and be dismissed.

23. After having heard learned counsel for the parties and perusing the records it is evident that the present appeal was although filed against four accused persons but two amongst the same have died and their appeal has been abated. The appeal survives only for the accused-respondent no.1 Shashi Kant Pandey and accused-respondent no.3 Savitri Devi. The said accused persons have been acquitted by the impugned judgement and order of the trial court. The present case relates to kidnapping of a child. The child is alleged to have been recovered at Varanasi Cantt. Railway Station. The child has not been produced before the trial court by the prosecution who was the best witness to have disclosed about the prosecution case. The trial court has given adequate findings for coming to a conclusion that the accused deserves to be acquitted. The findings are based on discussions in the judgement and order impugned. It cannot be said that they are vague or beyond records. The view in favour of the accused has been taken by the trial court. The present appeal is against acquittal. Since a reasonable view in favour of the accused-respondents has been taken, there is no reason to take a contrary view of convicting surviving accused-respondents and reversing the judgement of the trial court.

24. The appeal lacks merit and is thus **dismissed**.

25. Office is directed to return the trial court records to the trial court concerned forthwith.

(Samit Gopal, J.)

Order Date :- 10.1.2025

Gaurav Kuls