

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.707 of 2014

(Against the Judgment/Order dated 24.07.2014/01.08.2014 passed by Adhoc Additional District and Sessions Judge-I, Bettiah, West Champaran, in Sessions Trial No.66 of 2007, arising out of Nautan P.S. Case No.379 of 2004).

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Anil Mahto, son of Syamdeo Mahto, resident of village- Kargahia Purabi, P.S.- Bettiah Mufasil, District- West Champaran.

.... Appellant.

Versus

The State of Bihar

.... Respondent.

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Appearance :

For the Appellant : Mr. Sanjeev Kumar No.1, Advocate.

For the State : Mr. A.K. Sinha, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE V.N. SINHA

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE V.N. SINHA)

Date: 21-01-2015

Sole appellant is convicted for the offence under Section 364-A of the Penal Code. He has filed this appeal assailing the Judgment/Order dated 24.07.2014/01.08.2014 passed by Adhoc Additional District and Sessions Judge-I, Bettiah, West Champaran, in Sessions Trial No.66 of 2007, arising out of Nautan P.S. Case No.379 of 2004, whereunder the sole appellant has been convicted for the offence under Section 364-A of the Penal Code and directed to suffer imprisonment for life and also to pay fine of Rs.10,000/-, in the event of non payment of fine to further suffer six months imprisonment.

2. Prosecution case as set out in the written report (Ext.3) of



informant Vishwanath Sahni (P.W.5) addressed to the Officer Incharge Nautan P.S., District-East Champaran, that he is resident of village-Khap, Tola-Nautan, P.S. Nautan, District-Wast Champaran. His son Rajesh Sahni (P.W.6) aged 30 years had gone to Muzaffarpur to purchase cloths. Having purchased cloths he returned to Bettiah Railway Station by train at 02.00 A.M. and went to Fancy Mela Ground, Rajdyodhi to see theater but disappeared from Mela ground and he did not return to the shop at Nautan until the submission of the report and ransom call has been received on his Mobile No.9835471735 asking the informant to pay Rs.10,00,000/-. Informant further asserted in the written report that his son (P.W.6) has been abducted. In the light of the written report (Ext.3) aforesaid Nautan P.S. Case has been registered.

3. From Perusal of the written report (Ext.3), however, it appears that the Chief Judicial Magistrate, Bettiah, perused the same on 29.11.2004. From the written report, it further appears that the investigation of the case was taken up by the Officer Incharge, Nautan P.S. Sri Sanjeet Kumar Sinha (not examined). Chargehsheet, however, was submitted by his successor Randhir Kumar Singh (not examined) in the present case. Randhir Kumar Singh, submitted first chargesheet on 25.11.2004 against Manoj Paswan and subsequent chargesheet dated 07.02.2006 against the present appellant.

4. In the light of the first chargesheet, cognizance of the offence was taken and after commitment of the case charges were framed against Manoj Paswan in Sessions Trial No.335 of 2006. In the said trial



prosecution has examined as many as 11 witnesses including both the Investigating Officers, namely, Sanjeet Kumar Sinha and Randhir Kumar Singh as P.Ws.11 and 9. The trial court in the light of the evidence of the witnesses convicted Manoj Paswan under Judgment dated 14.09.2006 against which Manoj Paswan filed Criminal Appeal (DB) No.1095 of 2006 which was disposed of under Judgment and Order dated 11.11.2013 and the conviction and sentence imposed on Manoj Paswan was set aside.

5. In the light of the supplementary chargesheet, trial of the appellant vide Sessions Trial No.66 of 2007 proceeded, after framing of charge on 03.09.2007. In the trial of the present appellant same witnesses have been examined except the two Investigating Officers. The other witnesses however have supported the prosecution case as is evident from the Judgment of the trial court on the basis of which present appellant has been convicted.

6. Learned counsel for the appellant has submitted that the victim, who has been examined in both the trials as P.W.6 has given two contradictory versions. In the earlier trial and in the present trial. In the earlier trial the victim claimed that he has been abducted by Manoj Paswan and after abduction while in captivity of the abductors, he identified the present appellant as one of the abductors. In the present trial, the victim has claimed that not only Manoj Paswan but also the present appellant after abducting him took him on the same motorcycle by asking P.W.6 to sit in between the driver and pillion rider on the same motorcycle. Aforesaid version of the victim P.W.6 in the two trials is indicative of the departure

made by him while recording his evidence in both the trial(s). Aforesaid contradiction in the evidence of victim P.W.6 required clarification from both the Investigating Officers who submitted the two chargesheets, one against Manoj Paswan and other against the present appellant. Neither of the two Investigating Officers has been examined in the present trial.

7. In the circumstances, it is difficult for us to maintain the conviction of the appellant. Accordingly, the impugned Judgment of conviction and Order of sentence passed against the appellant is also set aside and the appeal is allowed. Appellant, if not wanted in any other case, is directed to be released forthwith.

8. Lower Court Records be sent to the court below.

(V.N. Sinha, J)

(Rajendra Kumar Mishra, J)

P.S./N.A.F.R.

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