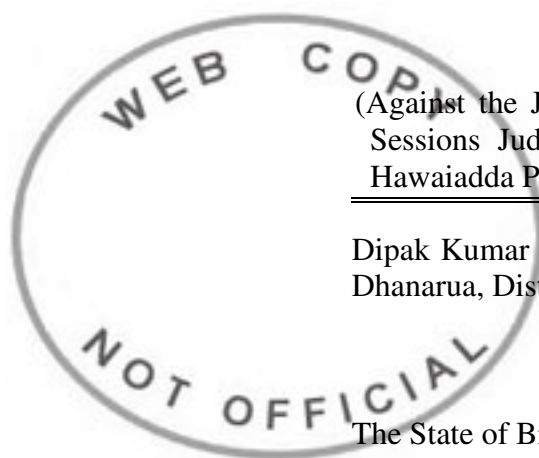




IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.306 of 2013

(Against the Judgment/Order dated 12.02.2013/16.02.2013 passed by Additional Sessions Judge-II, Patna, in Sessions Trial No. 814 of 2010, arising out of Hawaiadda PS.Case No. -34 of 2009)

Dipak Kumar @ Kesho, S/O Rajendra Singh, Resident of Village- Jahanpur, P.S.- Dhanarua, District- Patna

..... Appellant/s
Versus
The State of Bihar

..... Respondent/s
with

Criminal Appeal (DB) No. 190 of 2013

Narendra Kumar, S/O Sri Ashok Kumar, R/O Village-Naya Khandha, P.S.-Harnaut, Distt.-Nalanda

..... Appellant/s
Versus
The State of Bihar

..... Respondent/s
with

Criminal Appeal (DB) No. 241 of 2013

Rajesh Kumar @ Rajesh Kumar Singh, S/O Sri Vinay Singh @ Sri Vinay Kumar Singh, R/O Village - Nasariganj near Biscuit Factory, P.S. Danapur, District - Patna

..... Appellant/s
Versus
The State of Bihar

..... Respondent/s

Appearance :
(In CR. APP (DB) No. 306 of 2013, CR. APP (DB) No. 190 of 2013 and CR. APP (DB) No. 241 of 2013)
For the Appellant/s : Mr. Gyanendra Kumar Singh, Advocate.
Mr. Chandra Shekhar Singh, Advocate.
Mr. Vikramdev Singh, Advocate.

Mr. Dhirendra Kumar Sinha, Advocate.
Mr. Yashpal Yadav, Advocate.
Mr. Soni Kumari, Advocate.
Mr. Rahul Rathour, Advocate.
Mr. Sunil Kumar Pathak, Advocate.
Mr. A. K. Sinha, A.P.P.
Ms. S. B. Verma, A.P.P.
Mr. S.C. Mishra, A.P.P.

For the State

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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: 23-01-2015

These three appeals arise out of Judgment/Order dated 12.02.2013/16.02.2013 passed by Additional Sessions Judge-II, Patna, in Sessions Trial No. 814 of 2010, whereunder the appellants of each of the aforesaid appeals have been convicted for the offence under Section 364A read with 34 of the Penal Code and sentenced to rigorous imprisonment for life with further direction to pay fine of Rs.25,000/- each, in the event of failure to pay the fine, to suffer simple imprisonment for further four months.

2. Prosecution case as set out in the written report (Ext.2) of P.W.6, Sankalp Tak, is that he is resident of A-304, Fair Laxmi Industrial Estate, New Link Road, Andheri (west), Mumbai (Maharashtra) and is engaged in business of Dubbing Picture Serial at his office at Patliputra CHS 102/5D-Osiwara Bus Depot, Jogeshwari, Mumbai. Brij Tak, father of informant, had come to Patna on

19.05.2009 to meet one Mr. Sinha in connection with picture dubbing, as Mr. Sinha had asked him from Patna to prepare a documentary film in connection with the Indian Railway at Hajipur. It is further stated in the written report that father of the informant left for Patna by the morning flight at 8 A.M. Having reached telephonically informed his mother at home that he has reached Patna Airport and Sinha has sent a vehicle in which he is proceeding with his man. No further call was received from his father until evening as such informant was attempting to contact him but the call did not materialise. Informant however spoke to Sinha at about 3.30 P.M. who informed him that his father has arrived there whereafter his mobile also got switched off. It is further stated in the written report that informant's father was to return to Mumbai on 20.05.2009 by Kingfisher flight at 7 P.M. Sinha made call to the informant on 20.05.2009 at 7 P.M. from call no. 09507378252 that his father has suddenly fallen ill and has gone to Ranchi for treatment with his friend where he is admitted. The informant further asked Sinha to connect him to his father but Sinha refused and said that talk shall be arranged on 21.05.2009 at 10 A.M. The informant however asserted that if he is not allowed to talk to his father he will make complaint to the Police. Sinha thereafter disconnected. Informant again tried to connect to the aforesaid mobile number but Sinha handed over the mobile phone to some other



person, who asked the informant not to report to the Police and further said that if his work is over within two days his father will return otherwise he may not be traced and since thereafter the mobile of Sinha is again switched off and informant could not contact his father. Aforesaid written report was forwarded by Osiwara Police Station to the Superintendent of Police (City), Patna through FAX No. 26379334 dated 21.05.2009 and was received at 4.25 P.M. Superintendent of Police (City), Patna, having received the FAX message forwarded the same to the Officer-in-charge, Airport (Hawaiadda) Police Station with instruction to institute a case. In the light of the FAX message forwarded by the Superintendent of Police (City), Patna, Officer-in-charge, Airport (Hawaiadda) Police Station, S.I. Nirmal Kumar Yadvendu registered Airport (Hawaiadda) P.S. Case No. 34 of 2009 dated 21.05.2009 in accused column no. 7 of the F.I.R. Mobile No. 09507378252, Mr. Sinha is mentioned.

3. In the light of the contents of the aforesaid written report/F.I.R., S.H.O of Airport (Hawaiadda) Police Station proceed with the investigation and claims to have recovered the victim, P.W.4 on 29.05.2009 from railway compartment or a train going to Gorakhpur at Motihari Railway Station, the victim was thereafter examined under Sections 161 and 164 of the Cr.P.C on 29.05.2009. In the light of the statement of the victim as also the statement of



informant recorded on telephone and also the police statement of P.W.1 Ravindra Kumar, P.W.2 Raj Kumar, P.W.3 Ravi Rajesh, relative of the victim. P.W.5, Rajeev Dongra, the brother-in-law of the victim, P.W.7, Ashwani Kumar Satpathy, staff of the victim submitted charge sheet no. 65 of 2009 against the three appellants and one Gobind Kumar on 25.08.2009 for the offence under Section 364A, 34 of the Penal Code keeping the investigation pending against Santu Singh @ Santu, Umashankar, Raju Choudhary, Amar Kumar.

4. In the light of the charge sheet cognizance of the offence was taken and after supply of police paper case was committed to the court of Sessions, which was numbered as Sessions Trial No. 814 of 2010. The charges were framed under orders dated 03.06.2010. In support of the charge, prosecution examined as many as eight witnesses. P.W.1, Ravindra kumar, is the son-in-law of P.W.2, who is said to have taken the Voter Identity Card of his mother-in-law, Pinku Devi, wife of P.W.2 on the basis of which mobile connection vide SIM No. 9507378252 was obtained through accused no.1, Rajesh Kumar Singh, appellant of Criminal Appeal (DB) No. 241 of 2013 as it is said that he is the agent of Tata Indicom Service Provider. P.W.3, Ravi Rajesh, is the relative of the victim and said to have come to Patna from Mumbai along with P.W.5, Rajeev Dogra, brother-in-law of the victim and P.W. 7, Ashwani Kumar

Satpathy, the staff of the victim, for payment of ransom amount to those who abducted the victim. P.W.4, Braj Tak, is the victim, P.W.6, Sankalp Tak, is the son of the victim, who submitted the written report on the basis of which the present case was registered. P.W.8, Nirmal Kumar Yadvendra, Officer-in-charge of Airport (Hawaiadda) Police Station, is the Investigating Officer of the case.

5. In the light of the evidence of the aforesaid prosecution witnesses, the trial court under the impugned Judgment acquitted accused no.2, Govind Kumar, but convicted accused nos.1, 3, 4 by the impugned Judgment.

6. Before proceeding with the submission of the learned counsel for the appellants, it is appropriate to consider the evidence of P.W.6, Sankalp Tak, who is the informant of the case. He has stated in his examination-in-chief that his father had come to Patna on 19.05.2009 at the request of Karan Sinha for preparing a documentary film for Indian Railway for which a meeting was scheduled to be held at Hajipur on the same day between 02.00 to 05.00 P.M.. His father having reached Patna Airport on 19.05.2009 at about 08.00 A.M. informed his mother about his arrival at Patna, whereafter he could not be contacted but Karan Sinha informed him on phone at about 03.30 P.M. on the same day that his father is with him. He also spoke to Karan Sinha on 20.05.2009 in the afternoon



who told the informant from his Mobile No.9507377252 that his father is unwell and is admitted at Ranchi. He also assured the informant that his father speaks to him on 21.05.2009. On 21.05.2009 Karan Sinha again called the informant and told him that 10 lacs rupees be sent through Aswani Kumar Satpathy, P.W.7, and Ravi Rajesh, P.W.3, so that his father may go with them and also threatened that in case police case is registered his father, Braj Tak, may disappear. In paragraph-2, informant further stated that he gave written information about the aforesaid occurrence to Osiwara Police Station in Mumbai, which was faxed by Osiwara Police to the Superintendent of Police (City), Patna from its Fax No.26379334. Having seen the fax message, informant claimed that the same is in his handwriting and identified his writing which was marked as Ext.2 with objection. In the same paragraph, P.W.6 further deposed that after 9 days his father, P.W.4, was released at Begusarai Railway Station wherefrom a phone call was received informing him that he has boarded a train which is going to Gorakhpur.

7. Now, we come to consider the evidence of P.W.4, Braj Tak. He has stated in his deposition that the occurrence is of 19th May, 2009. 20-25 days earlier he began to receive call from Mobile No.9507378252 on his Mobile No.9821187601 for preparing a documentary film on the Railways for Hajipur Zone but he asked the

caller to obtain contract in his own name and assign the same to him but the caller insisted that he cannot take the work as he lacks experience. The caller further assured the victim that if his tender is cleared at his instance he will charge commission of 10%. In paragraph-3 victim further stated that he left Mumbai for Patna on 19.05.2009 and reached Patna Airport where Karan had promised to send the vehicle but the same did not reach the Airport, then he contacted Karan on his Mobile. Whereafter, Karan informed him that White Colour Tata Safari is coming to receive him on which two persons were sitting who asked him to board the vehicle and also told him that they are men of Karan Sinha. In paragraph-4, victim stated that the said vehicle moved in the town for some time and, thereafter, proceeded on the highway for Hazipur. After sometime, vehicle came to a lonely place where 2-3 more persons boarded the vehicle and, thereafter, the vehicle went to a forest and while in the forest the vehicle was stopped, the victim was relieved of his cash Rs.2000-2500/-, ATM Card, DVD Player. Vehicle, thereafter came to a village and the victim was confined to a room and ransom amount of Rupees One Crore was demanded but the deal was finalized at Rupees ten lacks whereafter the accused persons from their mobile allowed the victim to speak to his family members and then victim informed Aswani Kumar Satpathy , P.W.7, his staff to arrange Rupees Ten Lacs

and come for ensuring his released. In paragraph-6, P.W.4 further stated that his brother-in-law, P.W.5, Ravi Rajesh, P.W.3 and staff Aswani Kumar Satpathy, P.W.7, came to Patna, whereafter one of the accused persons informed him that money has come and he will be released even thereafter the victim was moved to 3-4 places but he is not in a position to name those places. In paragraph-7, victim further stated that the accused persons informed him that those who have come with, money are also accompanied by police men. The victim further deposed that he was released by abductors under police pressure at some Railway Station. The information about his release was given by the victim at his home and he purchased Railway Ticket from Begusarai and boarded the train, which was going to Gorakhpur but at Motihari Railway Station, the police party asked him to detrain. In paragraph-8, the victim further stated that during conversation accused persons, he learnt the names of the accused as Santu, Dipak, accused no.3, Narendra Kumar, accused no.4, Jitendra. After the police took the victim in its custody brought him to Patna, his statement was recorded by the police as also before Sri Anand Kumar Singh, Judicial Magistrate, First Class, Patna, under Section 164 of the Code of Criminal Procedure. The victim proved his signature over the statement (Ext.9). In paragraph-9, victim identified the accused wearing white vest present in the dock as one of his abductors and the



accused on being asked by the court disclosed his name as Narendra Kumar, accused no.4. The victim also identified another accused wearing yellow shirt present in the dock as one of his abductors and the said accused disclosed to the court his name is Dipak Kumar, accused no.3. He further stated in the same paragraph that he also heard from the abductors while in their captivity that one of them was Santu but he is not available in the dock.

8. P.Ws.3, 5, 7 are the relative, brother-in-law and staff of the victim, who came to Patna after it became clear that the victim, P.W.4 has been abducted and the deal to release him has been settled at Rs.10,000,00/-. Having come to Patna, the three stayed in Anand Hotel, near Patna Railway Station and on instruction of the abductors they came near the state Bank ATM and waited for the abductors to come and collect the ransom amount but none came to receive the same. Three witnesses returned to the hotel where they received further instruction that they should come to Mokama Railway station at Platform no.2,3 and wait near the engine on the far end of the platform where they would be contacted to collect the ransom amount and should wait so as to enable the abductors to come their and collect the ransom amount. In the light of the instruction, the three witnesses went to the far end of the platform and kept waiting for the whole night but nobody came and then in the morning the

witnesses returned to Patna. It, however, appears from their evidence that after they returned from Mokama they received another call from the abductors informing them they have come along with the police party in civil dress, the victim is likely to be killed. However, it does not appear from their evidence that they handed over the ransom amount to the abductors.

9. P.W.1, Ravindra Kumar, is the son-in-law of P.W.2, P.W.2, Raj Kumar is husband of Pinku Devi, in whose name Mobile No.9507378252 is subscribed. From the said mobile Sinha contacted the victim at Mumbai and requested him to come to Patna for obtaining a contract from the Railways at Hajipur for picturising the documentary film on Indian Railways. Aforesaid mobile number is also mentioned in the written report of P.W.6, Sankalp Tak, as also in Column No. 7 of the F.I.R. drawn on that basis along with Sinha, P.W.1, Ravindra Kumar, has stated in his deposition that he obtained photo copy of the Voter Identity Card and two photographs of his mother-in-law, Pinku Devi, and had handed over the same to accused no. 1, Rajesh Kumar @ Rajesh Kumar Singh, together with a sum of Rs.800/- in April, 2009 for obtaining a SIM and mobile connection but the same was not given to him by the accused no. 1, Rajesh Kumar Singh. He has also stated in his evidence that accused no. 1, Rajesh Kumar Singh, is selling agent of Tata Indicom Mobile. He



further stated in his evidence that earlier he had not obtained any other mobile connection from Rajesh Kumar Singh nor did he return the paper and photographs together with money. P.W.1, Ravindra Kumar, also identified Rajesh Kumar Singh in the dock. In paragraph 3, P.W.1, Ravindra Kumar, further admitted that he did not complain against accused no.1, Rajesh Kumar Singh, for either not giving him the mobile connection or for not returning the document and photograph as by then he was arrested by the police in connection with the present case.

10. P.W.2, Raj Kumar, has stated in his evidence that he is the husband of Pinku Devi and that she has been provided with Voter Identity Card, which was taken by his son-in-law, Ravindra Ram, for obtaining a mobile connection. P.W.2, Raj Kumar, has further stated that his son-in-law never provided his wife with any SIM card and has further stated that his wife does not have any mobile connection. He has also stated in paragraph 2 that his police statement was never recorded.

11. P.W.8, Nirmal Kumar Yadvendu, Officer Incharge of Airport Police Station, is the Investigating Officer of the case. Having received the Fax message dated 21.05.2009 from the office of the Superintendent of Police (City), Patna, asking him to institute the case, he registered F.I.R. of the present case and proceeded with its



investigation. During investigation, he examined the witnesses as also took custody of the victim after he was asked to detrain at Motihari Railway Station and then produced him before the Judicial Magistrate to record his statement. P.W.8 has, however, not informed the court in his deposition as to how the police party learnt about the victim that he has been released from its captivity and is proceeding towards Gorakhpur by train and asked the victim to detrain at Motihari. P.W.8 has just stated in his evidence that he learnt about the aforesaid facts from one Dy.S.P. without giving any clue as to how Dy.S.P or the police party learnt about release of the victim, P.W.4, and that he is proceeding towards Gorakhpur by train.

12. In the light of the prosecution evidence, learned counsel for the accused no.1, Rajesh Kumar Singh, submitted that conviction of accused no.1, Rajesh Kumar Singh, for the offence under Section 364A read with Section 34 of the Indian Penal Code is wholly unwarranted as there is absolutely no evidence on record against him on the basis of which he can be connected with the offence of abduction of P.W.4, Braj Tak for ransom. It is submitted that accused no.1, Rajesh Kumar Singh, is resident of Danapur, Patna, P.W.1 resident of Village- Sirnama, P.S. Chandi in the District of Nalanda resided at Bakhtiyarpur by the side of Railway Station in the District of Patna and served as pushcart worker and P.W.2, Raj



Kumar, father-in-law of P.W.1, being resident of Village- Beltham in Bakhtiyarpur Sub-Division within Patna District also served as a pushcart worker in Bakhtiyarpur, had hardly any occasion to contact accused no.1, Rajesh Kumar Singh, in Danapur, Patna for obtaining a SIM as there is no evidence placed on record to suggest that accused no.1, Rajesh Kumar Singh, had any shop/agency of Tata Indicom service provider where SIM is sold or he is a selling agent of the said company. The evidence of P.Ws.1 and 2 that they handed over the required document, photograph and Rs.800/- to accused no.1, Rajesh Kumar Singh, for obtaining SIM card, is further not to be trusted as it is admitted case that when P.W.1 gave document etc. to accused no.1, Rajesh Kumar Singh, he neither provided the SIM card nor returned the Voter Identity Card, photographs and the amount yet. P.Ws.1 and 2 chose not to lodge any complaint against accused no.1, Rajesh Kumar Singh. It is submitted that in the light of the evidence of P.Ws.1 and 2 and failure of P.W.4 the victim, and remaining witnesses P.Ws. 3, 5, 6 and 7 to name accused no.1, Rajesh Kumar Singh, in any other capacity in the entire episode of abduction, the conviction of accused no.1 for the offence of abduction of P.W.4 is wholly without any material on record.

13. Learned counsel for appellants/accused nos. 3 and 4, Dipak Kumar and Narendra Kumar, on the other hand, submitted

that true it is that in Court victim, P.W.4, Braj Tak, has identified both the accused as the one who were amongst his abductors and he identified them to be so while he remained in their captivity as he had seen them amongst the abductors. Aforesaid evidence of the victim, according to the learned counsel, will not constitute an offence under Section 364A of the Penal Code. Reference in this connection is made to the substantive provision and submitted that for committing an offence of abduction for ransom, extending threat to cause death or hurt, for payment of ransom is required to be established. In the present case, according to the learned counsel P.W.4, Braj Tak, deposed that after his abduction a deal was struck for his release on payment of rupees ten lacs and in response thereto, he asked his staff to arrange the money whereafter his relative, brother-in-law and staff, P.Ws. 3, 5, 7 having arranged the amount did come to Patna and moved to Mokama from Patna for payment of ransom amount but none came to collect the same and they went back to Mumbai without making payment to the abductors. In this connection, witnesses further deposed that abductors apprehended that they had come alongwith the police party in plain clothes. From the evidence of the victim, it is itself evident that the victim was released by the abductors at Begusarai Railway Station on account of police pressure and, thereafter, the abductors allowed him to board a train going to

Gorakhpur but police party asked him to detrain at Motihari Railway Station as would appear from the evidence of Investigating Officer, P.W.8. There is absolutely no material to suggest that any ransom amount was paid for securing the release of the victim.

14. In the light of the evidence on record, it is submitted that offence under Section 364A of the Penal Code is not established against the two accused. Rather the evidence on record i.e. identification made by victim, P.W.4, Braj Tak, of accused nos. 3, 4, Dipak Kumar and Narendra Kumar in court as the one who kept him in captivity for about seven days and presence of accused nos. 3 and 4 amongst the abductors established offence under Section 348 of the Indian Penal Code against them. In view of the evidence of victim, P.W.4, Braj Tak, that he was confined for about seven days without there being any threat to his life or being harassed in any manner or forced to make payment for securing his release as his release was secured on police pressure as has been deposed by the Investigating Officer, P.W.8, the offence under Section 348 of the Penal Code is attracted against the accused nos. 3 and 4. Reliance in this connection was placed on the Judgment of Andhra Pradesh High Court in the case of Jaganatham Ravi versus State of A.P., 2014 CRI. L. J. 4782. In the instant case prosecution has only been able to establish the factum of victim, P.W.4 being detained for about 7 days by accused



nos.3 and 4 and others but not by accused no.1, during the period of detention demand for payment of ransom amount of Rupees ten lac was made for securing his release without extending any threat to kill or to cause injury to him. The amount was however never paid, yet on police pressure as has been deposed by P.W.8 the Investigating Officer, victim P.W.4 was released. In the circumstances, we are of the considered view that offence under Section 348 of the Penal Code is attracted and established against accused nos.3 and 4, appellants in Criminal Appeal (DB) Nos.306 of 2013 and 190 of 2013, namely, Dipak Kumar alias Kesho and Narendra Kumar. Accordingly, their conviction recorded under Section 364-A of the Penal Code is converted into one under Section 348 of the Penal Code. They are in jail custody with effect from 03.06.2009, which is more than three years, the maximum sentence provided under Section 348 of the Penal Code. In appreciation of such fact, both the appellants are directed to be released forthwith, if not wanted in any other case. The two appellants have remained in jail custody for more than five years, which is more than the maximum sentence which could be imposed under Section 348 of the Penal Code, in appreciation of such fact, we direct that the fine imposed upon them shall not be realized.

15. In the result, Criminal Appeal(DB) Nos. 306, 190 both of 2013 of appellants, Dipak Kumar @ Kesho and Narendra

Kumar are dismissed with modification in sentence and conviction as indicated above. Criminal Appeal (DB) No. 241 of 2013 is allowed and appellant, Rajesh Kumar @ Rajesh Kumar Singh, is acquitted of the charge levelled against him. All the appellants are however directed to be released forthwith if not wanted in any other case.

(V.N. Sinha, J)

(Rajendra Kumar Mishra, J)

Bhardwaj/-P.S./-A.F.R.

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