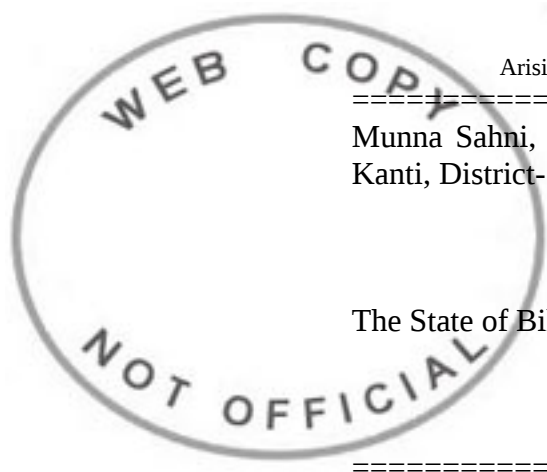




IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.711 of 2014

Arising Out of PS.Case No. -68 Year- 2009 Thana -MOTIPUR District- MUZAFFARPUR

Munna Sahni, Son of Vishwanath Sahni, Resident of village- Gosain Tola, P.S.- Kanti, District- Muzaffarpur

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

With

Criminal Appeal (DB) No. 474 of 2014

Arising Out of PS.Case No. -68 Year- 2009 Thana -MOTIPUR District- MUZAFFARPUR

Manish Kumar, s/o Late Dhruv Prasad, R/o Village - Baishakhawa, P.S. - Keshariya, District - East Champaran.

.... Appellant/s

Versus

The State of Bihar.

.... Respondent/s

With

Criminal Appeal (DB) No. 514 of 2014

Arising Out of PS.Case No. -68 Year- 2009 Thana -MOTIPUR District- MUZAFFARPUR

1. Dharmendra Sahni, son of Sri Shivajee Sahni
2. Mohan Sahni, son of Sri Jawahar Sahni
3. Jawahar Sahni, son of late Mana Sahni
Appellant No.1 resident of Vill-Sarafara Naya Tola, P.S. Barauli, District-Gopalganj.
Appellant Nos. 2 and 3, resident of village Rampur Sadona, P.S. Sidhwalia, District-Gopalganj.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

With

Criminal Appeal (DB) No. 539 of 2014

Arising Out of PS.Case No. -68 Year- 2009 Thana -MOTIPUR District- MUZAFFARPUR

Chandra Shekhar Sahni @ Chandan Sahni, S/o Late Kuldeep Sahni, R/o Village -

Madhopur, P.S. - Motipur, District - Muzaffarpur

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

With

Criminal Appeal (DB) No. 557 of 2014

Arising Out of PS.Case No. -68 Year- 2009 Thana -MOTIPUR District- MUZAFFARPUR

Birendra Thakur, son of Ram Janam Thakur, resident of village Narkatiya, P.S. Dhaka, District-East Champaran.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

With

Criminal Appeal (DB) No. 594 of 2014

Arising Out of PS.Case No. -68 Year- 2009 Thana -MOTIPUR District- MUZAFFARPUR

Dharmdeo Sahani, Son of Bharat Sahani, resident of village- Sundarapur, Police Station- Keshariya, District- East Champaran

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

With

Criminal Appeal (DB) No. 622 of 2014

Arising Out of PS.Case No. -68 Year- 2009 Thana -MOTIPUR District- MUZAFFARPUR

Binod Sahni @ Binod Kumar Sahni, S/O- Ram Karan Sahni, Resident of Village-Sarpuatti, P.S.- Belsand, Distt.- Sitamarhi.

.... Appellant/s

Versus

The State of Bihar

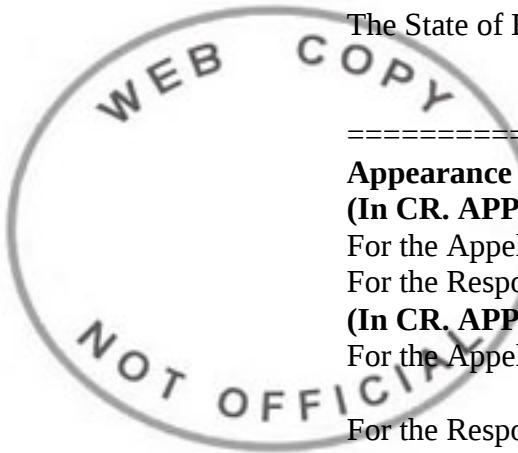
.... Respondent/s

With

Criminal Appeal (DB) No. 637 of 2014

Arising Out of PS.Case No. -68 Year- 2009 Thana -MOTIPUR District- MUZAFFARPUR

- 1. Laldeo Sahni, Son of Late Manu Sahni
- 2. Amarjeet Sahni, Son of Laldeo Sahni
- Both R/o Villae Maghi Nimuiya, P.S. Manjha, District Gopalganj



The State of Bihar
Versus
..... Appellant/s
..... Respondent/s
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Appearance :

(In CR. APP (DB) No. 711 of 2014)

For the Appellant/s : Mr. Ravindra Kumar, Advocate
For the Respondent/s : Dr. Mayanand Jha, A.P.P.

(In CR. APP (DB) No. 474 of 2014)

For the Appellant/s : Mr. Pramod Kumar Singh, Advocate
Mr. Rakesh Kumar No.1
For the Respondent/s : Dr. Mayanand Jha, A.P.P.

(In CR. APP (DB) No. 514 of 2014)

For the Appellant/s : Mr. Subodh Kumar sinha, Advocate
Mr. Naresh Kumar Sinha, Advocate
For the Respondent/s : Dr. Mayanand Jha, A.P.P.

(In CR. APP (DB) No. 539 of 2014)

For the Appellant/s : Mr. Pramod Kumar Singh, Advocate
Mr. Rakesh Kumar no.1, Advocate
For the Respondent/s : Dr. Mayanand Jha, A.P.P.

(In CR. APP (DB) No. 557 of 2014)

For the Appellant/s : Mr. Pramod Kumar Singh, Advocate
Mr. Rakesh Kumar no.1, Advocate
For the Respondent/s : Dr. Mayanand Jha, A.P.P.

(In CR. APP (DB) No. 594 of 2014)

For the Appellant/s : Mr. Anil Kumar, Advocate
For the Respondent/s : Dr. Mayanand Jha, A.P.P.

(In CR. APP (DB) No. 622 of 2014)

For the Appellant/s : Mr. Sunil Kumar Verma, Advocate
Mr. Suman Kumar Verma, Advocate
Mr. Krishna Prasad, Advocate
Mr. Amresh Kumar Mishra, Advocate
For the Respondent/s : Dr. Mayanand Jha, A.P.P.

(In CR. APP (DB) No. 637 of 2014)

For the Appellant/s : Mr. Surendra Prasad Gupta, Advocate
For the Respondent/s : Dr. Mayanand Jha, A.P.P.

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CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 24-06-2015

As many as 29 accused were put to trial in Sessions

Trial No.930 of 2009 before the 2nd Additional Sessions Judge,

Muzaffarpur, alleging offences punishable under Section 364A read with Section 120B of the Indian Penal Code.

The allegation was that on 26.05.2009, Ritik Raj, the son of Dr. Sudhir Kumar and Dr. Kiran Kumari, was kidnapped by A-1, their Compounder, at about 6 P.M., in the name of getting the mobile uploaded with video games and purchasing chips, and with the help of other accused, the boy was shifted from place to place and ultimately to Ambala in Haryana State. The complaint in this behalf was submitted by Dr. Sudhir Kumar in the night of 26.05.2009 in the local police station and Motipur P.S. Case No.68 of 2009 was registered against unknown persons. The boy, who was also examined as P.W. 7, is said to have been recovered in Farkhpur village, District Yamuna Nagar, Haryana State on 13.06.2009. Thereafter, the provision of law was altered in the FIR and the accused were named therein. After completion of the investigation, the police filed chargesheet against all the accused.

All the accused pleaded not guilty. Before the trial Court, P.W.s 1 to 13 were examined and no documentary or material exhibits were filed. Through its judgment dated 9th May, 2014, the trial Court acquitted 17 accused, but convicted 12 of them for the offence punishable under Section 364A read with Section 120B of the Indian Penal Code as well as Section 364 A read with



Section 34 of the Indian Penal Code. Punishment of rigorous imprisonment for life till death was imposed on accused Chandra Shekhar Sahani, Munna Sahani, Laldeo Sahni, Vinod Sahni, Amarjeet Sahni and Dharmendra Sahni, while on other accused, punishment of rigorous imprisonment for life was imposed. A fine of Rs.50,000/- on each accused was also imposed. In default of fine, the punishment of rigorous imprisonment for three years was imposed. Hence, a batch of eight these appeals by various accused that have been convicted in the case.

The learned counsel for the appellants submit that the entire case presented by the police is nothing but a concocted one, and hardly there exists any evidence either to prove the alleged act of kidnapping or to connect the appellants to the said incident. They submit that P.W.7, the boy, who is said to have been kidnapped, was fairly grown up one, intelligent and not only capable of handling a mobile phone, but also playing with video games uploaded therein, and even if his entire version is taken into account, hardly there exists any traces of kidnapping or coercion. They submit that narration of the P.W.7 in his evidence gives an impression that he was going for a pleasure trip without any protest and did not even mention as to how he did not feel like contacting his parents, particularly when the telephone was with him. It was

also pleaded that when the P.W.7 did not utter a word about any coercion or threatening against him, one expects a call to be made to his parents and not having taken place, the entire version is liable to be rejected.

The learned counsel for the appellants further submits that P.W.6, father of the child, stated that he received a phone call from his son, P.W.7, but the same was not spoken to by latter. They contend that P.W.6 did not even mention that any police official has come to his house or recorded his statement, whereas P.W.13, the Investigating Officer, stated that after receiving the complaint, he had gone to the house of P.W.7, recorded the statement of himself and his wife P.W.5 and this vital fact was ignored by the trial court. It is further pleaded that through the length and breadth of the evidence of P.W.13, it did not even indicate as to how breakthrough has emerged in the case. It is argued that though P.W.6 received a call on 03.06.2009 demanding ransom, there is no corresponding information to the police, much less the steps on the part of the police to trace the caller. They submit that lack of consistency on the part of the Court is evident from the fact that though the allegation is omnibus and evidence is common against all the accused, 17 was acquitted and the appellants were convicted without any valid reason whatever.



Dr. Mayanand Jha, learned Assistant Public Prosecutor, on the other hand, submits that this is a rare case, in which the kidnapped boy was examined as a person, and he was acquainted with the person who took him away. He contends that lack of protest on the part of P.W.7 was on account of the fact that A-1 was acquainted with him and every possible comfort was being provided. He submits that various alleged lapses in the case of prosecution pointed out by the learned counsel for the appellants are minor in nature, and once the factum of taking away the boy and demanding ransom are established, the other minor aspects slid to oblivion. He submits that the learned trial Court has taken correct view of the matter, and the acts of kidnapping for ransom deserve to be dealt with firmly and that the appeals are liable to be dismissed.

The incident leading to the trial of the accused is said to have taken place on 26.05.2009. A complaint was submitted by PW-6, the father of the boy, to the effect that his son was taken away by unknown persons. What happened thereafter becomes important since PW 6 did not even express suspicion against anyone, let alone naming the kidnappers. The prosecution did not put the various links in such a way that there exists a complete chain of events to connect the accused, to the incident. For all practical purposes, the breakthrough came only when PW 7, the boy, was said to have been

recovered in Farkhpur village, District Yamuna Nagar of Haryana State, on 13.06.2009, i.e. more than two weeks after the incident. It is thereafter, that the accused were named and offences were alleged against them. Therefore, the entire case turns upon the evidence of PW 7.

In his chief examination, PW 7 stated that Chandra Shekhar Sahi A-1 was working as Compounder-cum-Assistant in the Hospital of his parents i.e. PW 5 and PW 6. He stated that in the evening of 26.05.2009 A-1 came to him and asked him to follow to market for the purpose of uploading video games in the mobile. He is said to have resisted initially, and thereafter on being told that his father PW 6 instructed A-1 to do that, he followed him. It is not that PW 6 was at a distant place. He was very much in the Hospital which is the ground floor of the building. If PW 7 suspected the bonafides of A-1, he could have contacted his father.

The further evidence of PW 7 is a detailed narrative of what happened after they reached the market place, another accused is said to have come on a motorcycle on the way and himself and A-1 sat on motorcycle and proceeded. After travelling to some distance, the motorcycle is said to have stopped in a busy locality and from there A-1 is said to have gone to some other place, on the motorcycle

leaving him and other accused, at that place. If that was true, A-7 should have protested as to why A-1 is going to leave him with a stranger. That did not happen. Further, A-1 who was holding a cell phone in his hand, did not even contact his father.

The narration made by PW 7, in the chief examination, reveals as though he was readily following the instructions given by the accused, for travelling to any place whatever. The unnaturality of his evidence is clear from the fact that he referred to more than half a dozen accused by name as though he had acquaintance with them. The reference to places, made by him gives an indication as though he is a regular traveler to those places. He did not state as to what clothing had been provided, what food had been offered, and how he had been kept at various place between 26.05.2009 and 13.06.2009 nor did he mention as to whether he made any attempt to contact his father over such a long period. It was not stated that he received any phone call from his father or that his phone was inactive or any person had prevented him from using it.

PW 6 stated in his evidence that soon after he came to know that his son was missing, he submitted a complaint and for quite a long time he did not receive any positive information about him. He submitted that he contacted his son on cell phone during the relevant period. However the contents of the conversation were not

stated. When PW 7 did not state that he received any phone call from his father, the evidence of PW 7 in this behalf becomes doubtful.

Another aspect is that PW 6 did not state whether any police officials had visited him or recorded the statement, whereas the Investigating Officer, PW 13, stated that he reached at the Hospital and House of PW 6 and recorded the statement of PW 6 and his wife, PW 5. PW 13 did not state as to how the breakthrough was achieved in the case and on what basis accused in such a large number were named and apprehended. In case PW 7 was rescued and released by the Haryana Police, without any reference to the Bihar Police; efforts should have been made to examine the police officials from the State of Haryana. Even that was not done. It is also important to note that nowhere in his evidence, PW 7 stated that either he was subjected to any ill-treatment or he came to know about the demand of ransom being made. Evidence of other witnesses also does not command acceptability.

We would have certainly upheld the conviction and sentence ordered by the trial Court in case all the accused or some of them were taken into custody when any ransom was being accepted or PW 7 was found in their custody. Almost the entire case proceeded on the basis of speculation and hardly there was any

specific proven event which can connect the accused to the alleged incident.

Therefore, we allow the appeals and set aside the conviction and sentence ordered against the appellants. They shall be set at liberty forthwith unless they are required to be detained to serve sentence in any other judgment.

(L. Narasimha Reddy, CJ)

(Sudhir Singh, J)

Sunil/Manish

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