

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.131 of 2014

Against the judgment and order of conviction dated 17.01.2014 and 20.01.2014 passed by Sri Yogesh Narain Singh, the learned Ad-hoc Additional District & Sessions Judge-II, Khagaria, in Sessions Trial No. 400 of 2010/T.R. No. 18 of 2013.

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Niraj Kumar Mishra Son of Amod Kumar Mishra Resident of Village and P.S- Hasanpur, District- Samastipur, at present Residence at Village- Rani Shakarpur, P.S And District- Khagaria.

.... Appellant

Versus

The State Of Bihar

.... Respondent

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Appearance :

For the Appellant : Mr. Tarun Kumar Sinha, Advocate.

For the State : Mr. Bipin Kumar, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD
ORAL JUDGMENT

Date: 07-12-2015

Heard learned counsel for the appellant and learned counsel for the State.

2. This appeal arises out of judgment and order of conviction dated 17.01.2014 and 20.01.2014 passed by Sri Yogesh Narain Singh, the learned Ad-hoc Additional District & Sessions Judge-II, Khagaria, in Sessions Trial No. 400 of 2010/T.R. No. 18 of 2013 by which the appellant had been convicted for offence under Section 364 of Indian Penal Code and sentenced to undergo imprisonment for ten years and payment of fine of Rs.10,000/- and in non-payment of fine to undergo further imprisonment for six months.

3. The prosecution case as alleged in the First Information Report by the informant Md. Azam P.W. 4 that on 13.07.2010 at 12.00 noon he along with his friend Sabbir Alam were going for servicing of motorcycle new Yamaha YBR to Kothia Railway Dhala and when they reached Kothia Dhala near Muffasil P.S. Khagaria where Niraj Kumar Mishra, Shwet Kumar Mahto, Amarjeet Sharma along with two other boys were standing. Shwet Kumar Mahto and Niraj Kumar Mishra both asked to stop, then friend of the informant Sabbir Alam stopped the motorcycle. Thereafter, Shwet Kumar Mahto asked for lift till Bhadas village. Thereafter, the informant and Sabbir Alam along two boys which includes Niraj Kumar Mishra got seated on the motorcycle and when they reached Bhadas village, both were asked to lift them further ahead of Bhadas village on which Sabbir turn his motorcycle back and refused to go further ahead. In the meantime, three persons coming on a Rajdoot motorcycle which includes Shwet Kumar Mehta, Amarjeet Sharma and one unknown person started assaulted the informant and his friend Sabbir Alam and snatched Rs. 5000/-, Nokia mobile from the possession of the informant and snatched Rs. 500/-, mobile and key of motorcycle from the possession of Sabbir Alam. Thereafter, Niraj Kumar Sahani started motorcycle of the friend of the informant and got seated the informant and in the back of the informant, Niraj Kumar Mishra

seated in the aforesaid motorcycle and in the second motorcycle they got seated Sabbir Alam the friend of the informant as well as Shwet Kumar Mahto, Amarjeet Sharma and one unknown person seated in the aforesaid motorcycle and they started motorcycle and went to Alali Bahihar. There the informant and his friend stayed an hour. Thereafter, Shwet Kumar Sharma talks with some one in secrecy. Thereafter, Niraj Kumar Mishra got seated the informant in the motorcycle and in the back Niraj Kumar Mishra and one unknown boy got seated in the aforesaid motorcycle. Thereafter, Amarjeet Sharma started Rajdoot motorcycle and in the motorcycle Shwet Kumar Mahto and Sabir seated in the aforesaid motorcycle. Further case is that accused persons were demanded money. Further case is that since the Rajdoot motorcycle was proceeded ahead and taken the road of Khodabandpur Rosera and taking the informant by Niraj Kumar Sahani and proceeded towards Garhpura P.S. Further case is that Niraj Kumar Sahani talked with Amarjeet Sharma and they turned and to reach near the village of Dharmpur and in the way to save a child, the motorcycle turns down causing injury in left leg of the informant by which blood oozing out. Further case is that in the meantime, police party reached there and informant cried on top of his voice that he has been kidnapped. One boy managed to flee away and Niraj Kumar Mishra and Niraj Kumar Sahani were caught hold by the

police. On further enquiry, they disclosed that in the Rajdoot motorcycle Amarjeet Sharma and Shwet Kumar Mahto and other kidnapper flee away by another way.

4. On the Fardbeyan, F.I.R. lodged. Investigation proceeded. The Investigating Officer, Suresh Prasad Sah investigated the case and during investigation recorded the statement of the witnesses and inspected the P.O. Further statement of the informant and others witnesses were also recorded and recorded the defence statement. After completing the investigation, submitted charge sheet. On submission of the charge sheet, cognizance taken and case was committed to the Court of Sessions.

5. During trial, seven witnesses were examined by the prosecution. P.W. 1 Upendra Mahto, a farmer had deposed that he did not know anything about the occurrence and even his statement was not recorded and declared hostile. P.W. 2 Devaki Mahto and P.W.3 Satya Narain Mahto have been tendered. P.W. 4 Md. Alam is informant however supported the prosecution case as mentioned in the First Information Report. However, there is variation with the First Information Report where he has stated that he being kidnapped by the kidnapper on motorcycle and in the way while saving the boy, the motorcycle fell down upside down causing injury on the informant and in the meantime, police jeep reached there then informant cried at

top of his voice that he is being taken by the kidnapper. Further in this evidence this witness had stated that while he was being kidnapped then there was collusion between the vehicle of the informant and a cycle and he made hullah then villagers came and caught hold of Niraj Kumar Sahani then police came and recorded the statement. On his statement, F.I.R. was drawn and he has proved his signature at Exhibit-1. Hence, as per evidence of this witness, F.I.R. was drawn at the place of occurrence when police was informed by the villagers, then police came and recorded Fardbeyan. Further, in the Fardbeyan itself it has been mentioned that informant gave his statement on 13.07.2010 at Garhpura P.S. before to the police officer. Hence as per evidence of P.W.4, the statement of the informant was recorded and he has deposed that when the motorcycle fell down villagers rushed and informed to the police station and then police came and Fardbeyan was recorded at the place of occurrence. However, in the Fardbeyan, it has been mentioned that statement of the informant was being recorded at the premises of Garhpura police station which shows it is a serious contradiction which goes to the root of the prosecution case that when statement recorded at the police station then what happened to the place of occurrence when police reached there. P.W. 5 is I.O. and his evidence regarding occurrence is very cryptic, though, he claimed to be I.O. and he took charge of



investigation and had stated that after taking charge of investigation he went to the P.O. of the village-Kutubpur which is a distance of 500 yards from P.S. Muffasil. Further he has not been specifically stated about the boundary of the place of occurrence when occurrence took place. Thereafter, he has formally proved Fardbeyan, F.I.R. and seizure list. P.W. 6 is Md. Kalamuddin father of the informant and had deposed to the effect that he learnt about the occurrence i.e. kidnapping of his son and on hearing this information he became unconscious thereafter, he got conscious after ten minutes then he learnt that Shwet kumar Mahto kidnapped his son.

6. Having regard to the nature of evidence, there is no significance evidence of P.W. 7 Sabbir Alam, the friend of the informant. However, he has stated that after being kidnapped in the way accused persons Shwet Kumar Mahto, Amarjeet Sharma demanded Rs. 2,00,000/- in case. Further case is that Niraj Kumar Mishra and Niraj Kumar Sahani were arrested after the accident. He got information on telephone and then got disappointed and stated that they will left the place and make a request not to lodge a case and then on the second day this witness was left.

7. However, going into the entire evidence, there is no eye witness to the occurrence except two persons P.Ws. 4 and 7 who are stated to be victim, though, prosecution case as apparent from the



evidence of witnesses as well as First Information Report that while they were being kidnapped and one of the motorcycle fell down to save a boy then accused persons caught hold by the villagers and villagers informed the police and police came. However, in the First Information Report it was disclosed that Fardbeyan was recorded at the police station i.e. premises of the police station, but not at the P.O. and hence, it is a serious contradiction no one present there in the place of occurrence where motorcycle fell down and none of the villagers who were stated to be apprehended the appellant have come forward to depose that the appellant was arrested at the place of occurrence where motorcycle fell down, neither any witness has come forward to say that villagers telephone to the police officer then police party came nor there is any evidence that police received any intimation or information and recorded any Sanha entry and to proceed at the place of occurrence on received of telephone. The I.O. has not whisper on the part of second P.O. where the victim Sabbir Alam was taken and was kept in whole night and thereafter released on the next day. However, evidence of P.W. 4 and 7 who are said to be victim and their evidence suffer from contradiction and there is no corroboration regarding their evidence of kidnapping. However, Fardbeyan, F.I.R. and seizure list, though, has been proved formally by the informant, but one of the person either seizure list witness or

person who prepared seizure list has come forward to depose that seizure list was prepared by them nor there is any witness to say so that motorcycle was fell down and seizure list was prepared with regard to the said motorcycle.

8. Having regard to the fact that there is no witness to support the prosecution case except P.W. 4 and 7, but the informant and co-victim are interested witnesses and their evidence is suffer from contradiction. There is no corroboration either on material particular of raid or accused persons being apprehended at the place of occurrence.

9. Hence in such situation, I find and hold that accused person is entitled for benefit of doubt and I give the appellant benefit of doubt and hold that prosecution has not been able to prove the charges beyond reasonable doubt and hence order of conviction and sentence recorded by the trial court is not sustained and set aside. **The appeal is allowed.** The appellant who is in custody be set at liberty forthwith if not required in any other case.

m.p.

(Gopal Prasad, J)

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