

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.650 of 2009

Arising out of PS Case No.-23 Year-2006 Thana- Simari District- BUXAR

Sushil Chaudhary @ Sushil Kumar Chaudhary, Son of Sri Chandra Deo Chaudhary, Resident of Village & P.O. Akauni, P.S. Dumraon, District Buxar.

.... Appellant

Versus

The State of Bihar.

.... Respondent

with

Criminal Appeal (DB) No. 651 of 2009

Arising out of PS Case No.-23 Year-2006 Thana- Simari District- BUXAR

Manan Chaudhary, Son of Sri Brij Bihari Chaudhary @ Ledaru Chaudhary, Resident of Village Akauni, P.S. Dumraon, District Buxar.

.... Appellant

Versus

The State of Bihar.

.... Respondent

with

Criminal Appeal (DB) No. 669 of 2009

Arising out of PS Case No.-23 Year-2006 Thana- Simari District- BUXAR

Awadhesh Choudhary, Son of Late Ramkera Choudhary, Resident of Village Banarpur, P.S. Buxar (M), District Buxar.

.... Appellant

Versus

The State of Bihar.

.... Respondent

with

Criminal Appeal (DB) No. 671 of 2009

Arising out of PS Case No.-23 Year-2006 Thana- Simari District- BUXAR

1. Dadan Chaudhary, Son of Late Sri Kishun Chaudhary.
 2. Madan Chaudhary, Son of Late Sri Kishun Chaudhary.
- Both Resident of Village Halwanta, P.S. Kudra, District Kaimur (Bhabua).

.... Appellants

Versus

The State of Bihar

.... Respondent

Appearance :

(In CR. APP (DB) No. 650 of 2009)

For the Appellant : Shri Surendra Kumar Singh, Advocate
Smt. Tulika Singh, Advocate
Shri Gajendra Nath Ojha, Advocate
Shri Bijay Shankar Chaubey, Advocate

(In CR. APP (DB) No. 651 of 2009)

For the Appellant : None

(In CR. APP (DB) No. 669 of 2009)

For the Appellant : None

(In CR. APP (DB) No. 671 of 2009)

For the Appellant : None

For the State : Susri Shashi Bala Verma, APP

(In all appeals) : Shri D.K. Sinha, APP

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CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA

and

HONOURABLE SHRI JUSTICE GOPAL PRASAD

ORAL JUDGMENT

(Per: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA)

Date: 14-07-2015

The four appeals arise out of judgment of conviction and order of sentence dated 26th of May, 2009 passed by the learned Additional Sessions Judge-II, Buxar in Sessions Trial No. 243 of 2006 by which the five appellants of the four appeals were convicted of committing the offence under Section 364A of the Indian Penal Code and each of them was directed to suffer rigorous imprisonment for life as also to pay a fine of Rs. 5,000/- each else, to suffer simple imprisonment for ten months. In addition to the above, appellant Manan Chaudhary was individually convicted also under Section 406 of the Indian Penal Code and was directed to undergo rigorous imprisonment for two years. The sentences passed upon appellant Manan Chaudhary were directed to run concurrently.

2. The prosecution story is contained in the written report (Ext.1) of Binod Kumar Chaudhary (PW1) who happened to



be the father of victim Manish Kumar Chaudhary (PW10). It was stated by the informant that the victim Manish Kumar Chaudhary (PW10) who had gone to his school, had been taken away by appellant Manan Chaudhary at 11.00 A.M. on 27.01.2006 by his bicycle. The victim did not return for two days and the family members made hectic search for the child at the house of appellant Manan Chaudhary and at other places. On 29.01.2006 appellant Manan Chaudhary again came to the house of the informant and took away the Hero Honda Super Splendor motorcycle of dark blue colour promising the family members of the victim of his return with the child by evening. On 30.01.2006 at about 11.00 A.M., appellant Manan Chaudhary demanded that an amount of Rs. 3,00,000/- should be paid to appellant Sushil Chaudhary @ Sushil Kumar Chaudhary then only the child was to be restored to his family.

3. On the basis of Ext.1, the First Information Report of the case (Ext.3) was drawn up and the investigation was taken up.

4. It appears from the evidence of witnesses, specially, Tuleshwar Chaudhary (PW6) who happened to be the father of Binod Kumar Chaudhary (PW1), Dinesh Chaudhary (PW8) and Ramesh Chaudhary (PW9) and the grand father of



Manish Kumar Chaudhary (PW10) the victim that appellant Sushil Chaudhary @ Sushil Kumar Chaudhary had come to the house of the informant for collecting the sum of Rs. 3,00,000/- demanded as ransom in lieu of the return of the child and Tileshwar Chaudhary (PW6) asking appellant Sushil Chaudhary @ Sushil Kumar Chaudhary to wait for sometimes, collected some of his villagers, arrested appellant Sushil Chaudhary @ Sushil Kumar Chaudhary and then the written report with the appellant was handed over to the police. This more or less is the evidence also of Dinesh Chaudhary and Ramesh Chaudhary (PWs. 8 and 9) respectively.

5. It appears that on being handed over to the police, appellant Sushil Chaudhary @ Sushil Kumar Chaudhary was questioned by them and during that course he pointed out that Manan Chaudhary could be available at the house of one Krishna Kumar Chaudhary at village Dhawachhua and, accordingly, the police along with the informant and others went to the house of the said Krishna Kumar Chaudhary and arrested Manan Chaudhary at about 9.30 A.M. and also recovered the Hero Honda Splendor motorcycle belonging to the informant from the house of the said Krishna Kumar Chaudhary. The seizure memo in respect of recovery of the motorcycle has been marked Ext.6.

6. Appellant Manan Chaudhary was taken into



custody and was again questioned by the police who stated that the victim Manish Kumar Chaudhary (PW10) was confined in the house of appellants Madan Chaudhary and Dadan Chaudhary at village Halwanta within Kudra police station in the district of Kaimur and, accordingly, the police along with the informant and his family members reached village Halwanta at the house of appellants Madan Chaudhary and Dadan Chaudhary and as may appear from the evidence of PWs. 8, 9 and the victim Manish Kumar Chaudhary (PW10), the child was found lying in a room where paddy straw had been stacked and two appellants Madan Chaudhary and Dadan Chaudhary were also found sleeping there. While victim Manish Kumar Chaudhary (PW10) was recovered from there, appellants Madan Chaudhary and Dadan Chaudhary were arrested from that place. The house was belonging to appellant Awadhesh Chaudhary and he was also arrested from there.

7. The Investigating Officer has not been examined but these facts clearly appear from the evidence of witnesses examined so far in the case. The appellants were sent up for trial and that ended in the impugned judgment.

8. We have heard Shri Surendra Kumar Singh, the learned counsel appearing on behalf of the appellant Sushil



Chaudhary @ Sushil Kumar Chaudhary. In spite of the appeals appearing on the list since last many days and the batch of appeals being called out for hearing and one of it being heard, the counsel whose names appear in the list and who had filed other criminal appeals have not chosen to appear and considering the provisions of Section 386 Cr.P.C. which grants a right of hearing to a counsel only when he appears, we have with the aid of the learned counsel appearing on behalf of appellant Sushil Chaudhary @ Sushil Kumar Chaudhary as also with the aid of the learned counsel appearing for the State have gone through the evidence and have proceeded to dispose of the present batch of appeals through the present judgment.

9. The defence of the appellants was of innocence and non-participation. As regards appellant Sushil Chaudhary @ Sushil Kumar Chaudhary, it was contended that he was merely acting at the direction of the appellant Manan Chaudhary and had gone to the house of the informant to collect the amount of Rs. 3,00,000/-.

Submission was made also on the general merit of the appeals and it was contended that Manan Chaudhary and appellant Sushil Chaudhary @ Sushil Kumar Chaudhary were relatives of the informant and they were not professional criminals along with

the other appellants and the Court should have taken a lenient view as regards the sentences passed upon each of them.

10. Binod Kumar Chaudhary (PW1) the informant had given the evidence that while he and his brothers were away at Simari which appears situated at a distance of 7 K.M. from his village Manikpur and when his father Tileshwar Chaudhary (PW6) was also away into the fields, this appellant who had come a day prior to the incident and had stayed at the house of the informant had taken away Manish Kumar Chaudhary (PW10) telling him that he was to take him to witness and hear *Birha* songs. Satish Kumar (PW5) who was the elder brother of Manish Kumar Chaudhary (PW10) the victim of the offence would depose that he was also asked by appellant Manan Chaudhary to accompany him for hearing the songs of *Birha* but he refused. However, appellant Manan Chaudhary succeeded in alluring victim Manish Kumar Chaudhary (PW10) and took him away by using his cycle. The informant could know from his brother Ramesh Chaudhary (PW9) that Manan Chaudhary had taken away the victim from his house during their absence and the same fact was communicated by Ramesh Chaudhary (PW9) to Dinesh Chaudhary (PW8) the full brother of PW1 the informant. As may appear from the evidence of Tileshwar Chaudhary (PW6), the mother of the victim was restless



and was weeping in the evening when the boy had not come in the afternoon when Tileshwar Chaudhary (PW6) the grandfather of the victim was consoling his mother that Manan Chaudhary was none else than a very close relative and, as such, she should be patient to look forward to the return of the child. But, as the ill luck would have it, the child did not come when Ramesh Chaudhary (PW9) was sent to village Akauni, the place of residence of appellant Manan Chaudhary PW9 came back with the news that neither Manan Chaudhary nor Manish Kumar Chaudhary (PW10) had reached village Akauni after they had departed from the house of the informant on 27.01.2006. Witnesses could say that there was a hectic search by the family members, when on one day a telephone call was received at the public call booth of Md. Ayub (PW7) who also appears nicknamed Bhola to bring on line the informant Binod Kumar Chaudhary (PW1). The public call booth of Md. Ayub was just by the side of the shop of the informant and, accordingly, a word was sent to the shop of the informant and that brought Ramesh Chaudhary (PW9) on to the line who talked to Manan Chaudhary who conveyed to PW9 that an amount of Rs. 3,00,000/- should be paid in lieu of the return of the child and the Hero Honda Splendor motorcycle, should also be given to the kidnappers. PW9 would say that he stated to appellant Manan Chaudhary that it was

a very big sum and the family was not in a position to pay the amount. However, appellant Manan Chaudhary was insisting upon it and stated that the ransom amount must be paid to Sushil Chaudhary @ Sushil Kumar Chaudhary.

Tileshwar Chaudhary (PW6) would say that at about 3.00 P.M. on the 30th of January, 2006, appellant Sushil Chaudhary @ Sushil Kumar Chaudhary arrived at his village and reiterated to PW6 that the ransom amount of Rs. 3,00,000/- had to be paid to him. PW6 appears to us a cleaver and intelligent person. He requested appellant Sushil Chaudhary @ Sushil Kumar Chaudhary to wait for sometimes and left his house to collect some of the persons named by him in paragraph-9 of his evidence and he along with the villagers arrested appellant Sushil Chaudhary @ Sushil Kumar Chaudhary and as may appear from the evidence of Binod Kumar Chaudhary (PW1) and his brothers that as soon as they had learnt about the arrest of Sushil Chaudhary @ Sushil Kumar Chaudhary, they all rushed to the police station with the written report to hand over the criminal along with the written report.

11. It was how appellant Sushil Chaudhary @ Sushil Kumar Chaudhary was arrested and handed over to the police.

12. The arrested appellant was quizzed regarding the whereabouts of Manan Chaudhary and he ultimately gave the



information that he could be available at the house of Krishna Kumar Chaudhary at village Dhawchhua. Accordingly, the police along with the informant and others went to the house of Krishna Kumar Chaudhary to find appellant Manan Chaudhary there along with the motorcycle he had taken away from the house of Binod Kumar Chaudhary (PW1). Manan Chaudhary was arrested and the motorcycle was also seized by the police by preparing Ext.4. Manan Chaudhary was brought to the police station along with the motorcycle and he was questioned by the police when he gave the information that the victim Manish Kumar Chaudhary (PW10) was confined in the house of appellant Awadhesh Chaudhary at village Halwanta within the police station Kudra and, accordingly, the police along with the informant and others came to the house of appellant Awadhesh Chaudhary to find that the victim Manish Kumar Chaudhary (PW10) was sleeping on a bed of straw in the company of two appellants Madan Chaudhary and Dadan Chaudhary. While Manish Kumar Chaudhary (PW10) was recovered, the two appellants Madan Chaudhary and Dadan Chaudhary were arrested.

13. As appears from the evidence of victim Manish Kumar Chaudhary (PW10), after being taken away from his house, appellant Manan Chaudhary had asked him to stay at a *Bandh* and



thereafter he along with other accused persons which included Sushil Chaudhary @ Sushil Kumar Chaudhary took him to a bus stop where he was put into a bus by which he had been transported to village Halwanta and was confined into the house of appellant Awadhesh Chaudhary from where he was recovered by the police. Manish Kumar Chaudhary (PW10) had stated that the two appellants Madan Chaudhary and Dadan Chaudhary used to keep watch upon him and used also to sleep around him.

14. The contention of the learned counsel appearing on behalf of the appellant, namely, Sushil Chaudhary @ Sushil Kumar Chaudhary that he was merely acting as per the direction of appellant Manan Chaudhary and had indeed not participated in commission of any offence, appears to us completely hollow and meritless. While the above submission was being addressed to us, we drew the attention of the learned counsel appearing for the appellant Sushil Chaudhary @ Sushil Kumar Chaudhary to the provision of Section 364A of the Indian Penal Code and after taking the learned counsel through the provision, we had very well pointed out to him that on account of being an organized crime the very provision indicates the compartmentalization of duties which could be performed by many persons for the purposes of extorting ransom after kidnapping and wrongfully confining the victim, as is



defined by Section 364A of the Indian Penal Code. During that course we had very well pointed out to the learned counsel that it may be that some hands were involved in picking up and kidnapping the victim while the others could be acting to transport him to a particular place of concealment. The other hands may be involved in the further lifting the victim from the first place of confinement to another and there could be some more hands and minds which could be involved in parlaying with the family members of the victim in negotiating the payment of ransom or merely conveying the amount which was required to be paid in lieu of returning the victim to his family. There could be other set of persons who could be involved in keeping the supply lines, as regards foods, continuing. Those persons could be bringing meals for the victim or their associates who could be keeping guard on the victim or who could be watching the movement of the police force. It may be true that some of the kidnappers or persons who are associated with these compartmentalization of duty in an occurrence of kidnapping for ransom, are not really and directly involved in kidnapping the victim or wrongfully confining him or in really negotiating for the payment of ransom but, as we have just pointed out some other compartments of duty which had been entrusted to one or the other person as regards the contribution of



the associates of the gang of kidnappers. This was how Manan Chaudhary had deputed appellant Sushil Chaudhary @ Sushil Kumar Chaudhary to realize the ransom amount of Rs. 3,00,000/-. It was not a random act of appellant Sushil Chaudhary @ Sushil Kumar Chaudhary rather as appears from the evidence of Binod Kumar Chaudhary (PW1), Ramesh Chaudhary (PW9) and Tileshwar Chaudhary (PW6), appellant Manan Chaudhary had, before sending appellant Sushil Chaudhary @ Sushil Kumar Chaudhary to the house of the informant, had telephonically informed Ramesh Chaudhary (PW9) and thus, had conveyed to the victim's family that they are required to pay up an amount of Rs. 3,00,000/- if they wanted the boy to get back to them. In addition to that, he had also conveyed a message very clearly that the family of the victim shall have to pay up the ransom amount for the restoration of the child who had been taken away by him. It was only after these formalities or modalities as the case may be, were conveyed by appellant Manan Chaudhary telephonically to the family of the victim that Sushil Chaudhary @ Sushil Kumar Chaudhary had arrived at the house of the informant to collect the sum. It was not a random act of Sushil Chaudhary @ Sushil Kumar Chaudhary. It was as per the plan chalked out by appellant Manan Chaudhary which modality was conveyed to the members

of the family as regards ransom and payment of the ransom amount that Sushil Chaudhary @ Sushil Kumar Chaudhary had arrived at 3.00 P.M. on 30.01.2006 at the house of PW1 when he was captured by the family members others and handed over to the police. He was equally contributing in the commission of the offence of Section 364A of the Indian Penal Code.

15. We have, while considering the evidence of the witnesses in the earlier part of the judgment, pointed out that Manan Chaudhary was the person who had picked up the boy or had allured him to go with him on a pretext which was non existent. The facts stated by the witnesses, like, Binod Kumar Chaudhary (PW1), Manoj Rai (PW4), Satish Kumar (PW5), Tileshwar Chaudhary (PW6), Dinesh Chaudhary (PW8), Ramesh Chaudhary (PW9) and lastly Manish Kumar Chaudhary (PW10), the victim leaves no manner of doubt that Manan Chaudhary had taken away the child from his lawful guardianship on a pretext which never existed. The attempt of appellant Manan Chaudhary, as appears stated by Satish Kumar (PW5) the brother of Manish Kumar Chaudhary (PW10) was to take two brothers away from the family members and probably that was designed to negotiate higher amount of ransom. However, Satish Kumar (PW5) did not fall into the trap of appellant Manan Chaudhary and did not



accompany him. Appellant Manan Chaudhary was again at the house of the informant on the 29th of January, 2006 when he was questioned by the family members and after his initial refusal to know anything about the child, he promised them to bring the child back to the family, if they had given him the Hero Honda Splendor motorcycle. Ramesh Chaudhary (PW9) could say that he and others were asking Manan Chaudhary to use the old motorcycle but he was insisting upon using the brand new motorcycle and had never come back with the boy and dropped the information to the family members telephonically to pay up the amount of Rs. 3,00,000/- as also to give up the Hero Honda Splendor motorcycle in order to getting the victim back to the house. Thus, what appears from the evidence of the witnesses is that he was the chief architect of the entire episode and he was the man who had taken away the victim.

16. While considering the evidence of witnesses we found it consistently stated by the witnesses that after Sushil Chaudhary @ Sushil Kumar Chaudhary was handed over to the police and after he was there at the police station he had dropped an information that Manan Chaudhary could be available at the house of Krishna Kumar Chaudhary at village Dhawachhua and, accordingly, the police along with the informant and others



reached the house of the said Krishna Kumar Chaudhary to find Manan Chaudhary there along with the motorcycle. Krishna Kumar Chaudhary was arrested along with Manan Chaudhary but we do not have any particular reason as to why he was not sent up for trial. In our opinion, his complicity was also there as appears from the evidence of the witnesses. In any view, what we find is that Manan Chaudhary after his arrest had dropped the information about the confinement of victim Manish Kumar Chaudhary (PW10) and, accordingly, the house of appellant Awadhesh Chaudhary was raided by the police where the victim was found lying under the watchful eyes of appellants Dadan Chaudhary and Madan Chaudhary who were also arrested from there. It was the house of Awadhesh Chaudhary and as appears from the evidence of PW10, it was a *khaprail* house which was in good living condition and we have all the reasons to believe that as soon as Manish Kumar Chaudhary (PW10) had been brought by his captors for being confined in one of the rooms of his house, Awadhesh Chaudhary could not escape the knowledge of the boy having been kidnapped and the purpose of bringing the boy to his house. He was, as such, quite aware of the fact that Manish Kumar Chaudhary (PW10) had been kidnapped and he was aiding the accused persons, like, Manan Chaudhary, Dadan Chaudhary and



Madan Chaudhary to wrongfully confine the victim Manish Kumar Chaudhary (PW10) in his house. He was, as such, constructively responsible for wrongfully confining a kidnapped person, like, PW10 knowing fully well that PW10 had been kidnapped by Manan Chaudhary and others. We, at the cost of repetition, again want to point out that the evidence is consistent and quite acceptable that Dadan Chaudhary and Madan Chaudhary were there to guard the victim from where they were arrested.

17. The purpose of kidnapping Manish Kumar Chaudhary (PW10) was only to raise a sum of Rs. 3,00,000/- from his family members. As such, the offence under Section 364A of the Indian Penal Code, in our opinion, was duly constituted on facts and every one among the appellants appears contributing in one way or the other in commission of the offence. As such, we uphold the conviction of all the appellants under Section 364A of the Indian Penal Code and under the facts and circumstances, we feel no necessity to interfere with the order of sentence which was passed by the learned trial judge.

18. However, as regards the conviction of appellant Manan Chaudhary under Section 406 of the Indian Penal Code, we have some doubt that that particular offence was constituted on the facts of the case. In the facts of the case, what we find is that it

may be an offence somewhere around attempt to extort and in that view of ours we acquit appellant Manan Chaudhary under Section 406 of the Indian Penal Code by setting aside the sentence passed upon him.

19. In the light of the discussions made by us of the evidence and circumstances appearing there from, we find no merit in the appeals except the modification we have ordered in respect of conviction of appellant Manan Chaudhary under Section 406 of the Indian Penal Code. We, accordingly, dismiss the batch of appeals. Appellants other than Sushil Chaudhary @ Sushil Kumar Chaudhary are on bail. Their bonds are hereby cancelled. Let them surrender and serve out the sentence passed upon each of them. If they do not surrender within a month of receipt of the copy of the present judgment, the trial judge must take all steps necessary to ensure their arrest and committal to custody for serving out the sentence.

(Dharnidhar Jha, J.)

(Gopal Prasad, J.)

Sanjay/N.A.F.R.

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