

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.196 of 2006

Arising Out of Bhabhua PS.Case No. 300 Year2003, District- BHABHUA (KAIMUR), giving rise to Sessions Trial No. 91/34 of 2005.

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1. Pradeep Ram, son of Loknath Ram, resident of Village Pusauli, Police Station Kudara, District Kaimur at Bhabua.
 2. Bahadur Ram, son of Shvnath Ram, resident of Village Sondihara, Police Station Bhabua, District Kaimur at Bhabua
 3. Munna Miyan alas Muna Asari, son of late Asagar Miyan, resident of Village Khanav, Police Station Bhaua, District Kaimur at Bhabua-- Dead

.... Appellants

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellants : Shri Rajni Kant Pandey, Advocate

For the Respondent : Shri Dilip Kumar Sinha, A.P.P.

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CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA

and

HONOURABLE SHRI JUSTICE AMARESH KUMAR LAL

ORAL JUDGMENT

(Per: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA)

Date: 07-04-2015

The present appeal arises out of the judgment of conviction and order of sentence dated 7.12.2005 passed by the learned 1st Additional Sessions Judge, Kaimur at Bhabua in Sessions Trial No. 91/34 of 2005, by which the appellants, namely Pradeep Ram and Bahadur Ram along with deceased accused Munna Miyan alias Muna Ansari were held guilty of committing the offence under

Section 364-A of the Indian Penal Code and, after being heard on sentence, were directed to suffer rigorous imprisonment for life and also to pay a fine of Rs. 2,000/- each, else, to suffer rigorous imprisonment for six months.

2. There is no dispute that Gulab Chand Sah (P.W.4) was kidnapped or abducted from the place where he was sleeping with his father, the informant Radheyshyam Sah, and co-villages Aklu Singh Yadav (P.W.3) and Sanjay Yadav (P.W.2) (who died during the pendency of the trial). It also does not appear disputed that 6-7 criminals carrying guns and wearing full-pants and shirts came there and, firstly, asked the informant Radheyshyam Sah to give them drinking water and when Sanjay Yadav (P.W.2) asked them to take the lota and draw out water from the tube-well they started assaulting him with lathi. Being frightened on the behaviour of the criminals, Sanjay Ydadav himself took out the water pot and drew out water from the tube-well and gave the same to the criminals to drink. But before they had left the place they carried with them P.W.3 Aklu Yadav, P.W.2 Sanjay Yadav and P.W.4 Gulab Chand Sah informing the informant and others that the criminals belonged to one Kaimur Baba Camp. They had tied the hands of Sanjay Yadav and Aklu Yadav behind their back with the shawl which they had worn and had left them at some place while they took away P.W. 4 Gulab Chand Sah with them threatening that if money in lieu of return of Gulab Chand Sah was not paid to them, then Gulab Chand Sah would be killed. The criminals, also, at the same time asked the informant not to raise a hulla and resist their acts, else Gulabchand Sah was to be shot dead there. The informant stated that he maintained a silence and when asked about the amount of money what was required to be paid, the criminals stated that information in this regard would be conveyed to him later on. The criminals also asked the informant

about his status as regards the property and the informant stated that he was possessed of 1.25 Bighas of land.

3. On the basis of the fardbeyan of Radheyshyam Sah the, F.I.R. of the case was drawn up by P.W. 7 S.I. Hardeo Narain Mandal, who was the Officer-in-charge of Sonhan Police Station who had received a telephonic message about the kidnapping of Gulab Chand Sah. He came to the Village, recorded the fardbeyan and thereafter took up the investigation. He inspected the place of occurrence, recorded the statements of the witnesses and after learning that Gulab Chand Sah had come back from his confinement on 8.11.2003, he recorded the statement of P.W. 4 and after completing the investigation sent the two accused, i.e., Pradeep Ram and Bhadur as also deceased accused Munna Miyan alias Muna Ansari up for their trial.

4. The trial culminated into the impugned judgment of conviction and order of sentence.

5. While the present appeal was pending, it was noted that appellant Munna Miyan alias Muna Ansari died. As may appear from the record of the present appeal, the appeal as on his behalf was directed to abate as regards the substantive sentence of imprisonment leaving the two appellants Pradeep Ram and Bahadur Ram on the array of the appellants.

6. Shri Rajni Kant Pandey, learned counsel appearing on behalf of the appellants referred to us the relevant part of the evidence and has submitted that there was absolutely no evidence against the appellants and conviction of the appellants was virtually without any basis. It was further contended that the police claimed that some currency notes totaling Rs. 4300/- were recovered from appellant Pradeep Ram and those currency notes were bearing letters and words

‘R.S. Sah’. The police inferred that those currency notes were the money which was paid by the informant as ransom amount in lieu of return of his son Gulab Chand Sah. The submission was that it was completely erroneous on the part of the learned trial Judge to accept the letters and words ‘R.S. Sah’ to connote to Radheyshyam Sah and it was a fallacy on the part of the learned trial Judge to deduce that the money recovered was a part of ransom amount paid by Radheyshyam Sah in lieu of return of his son Gulab Chand Sah. The submission was that ‘R.S. Sah’ could never denote Radheshyam Sah only and if at all there was necessity to collect the proper evidence, it was required that the currency notes ought to have been placed before Radheyshyam Sah for identification. Submission was that not collecting that evidence could have left a defect in the prosecution case. The submission also was that P.Ws. 5 and 6, i.e., Shyam Narain Ram and Nagina Ram, full brothers between themselves, stated that in the night of 21.10.2003 the two persons, namely, Pradeep Ram and Dadan Ram had arrived at their house and had pressured them by threatening them also on keeping in their custody the boy whom they had kidnapped. The initial resistance of the two witnesses were making them very serious face and as may appear from the evidence of the two witnesses they were beaten up by the butt of the gun and, lastly, they were forced by them to keep the boy in their custody and then to feed him for which Rs. 90/- was paid to P.W. 5. However, in spite of the evidence and story claimed by P.W. 5 there was no identity disclosed by the two witnesses nor the two witnesses claimed that they had identified the criminals. The submission was that the evidence of the two witnesses could not be accepted as useful and reliable because the same is not only insufficient rather it was useless as regards the participation of any persons in the commission of the offence.

7. Shri Dilip Kumar Sinha, learned Additional Public Prosecutor has been fair in pointing out that the evidence which has been read out by the learned counsel for the appellants was material which was used by the learned trial Judge for convicting the appellants and sentencing them as appears from the impugned judgment.

8. The evidence of P.W. 4 Gulab Chand Sah does indicate that he had been kidnapped or abducted from the place where he was sleeping with his father and two others Sanjay Singh Yadav and Aklu Yadav who have been examined as P.W. 3 and 2 respectively and they have also testified to the facts that the criminals had arrived carrying arms and weapons and had asked the informant to give drinking water. The initial asking of Sanjay Singh Yadav to draw out water themselves infuriated them and that forced Sanjay Singh Yadav (P.W.2) to draw out water and give them to drink. He has also stated that the criminals had tied his hands as also the hands of Sanjay Singh Yadav and Aklu Yadav behind their back but none of the four witnesses appears identified any of the criminals. They might have given the features of the criminals, but in spite of the appellants having been arrested they had not even been put on the Test Identification Parade so as to establishing that indeed they had participated in commission of the offence. The lack of evidence was of such a degree that P.W. 4, who was the victim, was not identifying any one even in the court room. The two witnesses, i.e., P.Ws. 5 and 6 might have stated that they were forced to take into their custody a person who had been kidnapped or abducted by appellant Pradeep Ram and one Dadan Ram, but for whatever reason might be the two witnesses refused to identify as to who was the man who had put the boy under their custody. While deposing in court, the two witnesses, i.e., P.Ws. 5 and 6

again stated that they did not identify the man who had put the boy into their custody. Thus, what appears is that there has been complete lack of evidence on the identification of the person as regards putting in custody of P.W. 5 the boy after being kidnapped by the criminals.

9. As regards the evidence of recovery of money from appellant Pradeep Ram totaling RS. 4300/-, all of the currency notes were not bearing the words and letters 'R.S. Sah', a few of them did bear those letters and words. and it was rightly submitted that the letters and words 'R.S. Sah' may not denote Radheshyam Sah . It may, in its expanded form, be telling many names which may not be Radheshyam Sah, the informant of the case. As such, connecting the currency notes with the payment of ransom amount by Radheshyam Sah so as to obtaining Gulab Chand Sah from the custody of the criminals, appears quire a stretched interpretation of the evidence. In the fitness of things, after recovery of the currency notes, the police, without any loss of time, ought to have organized a Test Identification Parade or should be called Radheshyam Sah and should have been shown the currency notes and ought to have collected the evidence on identification of the currency notes if it was firmed in its opinion that those were part of ransom amount paid by Radheshyam Sah. That having not been done as regards identification of the currency notes, we are at a loss to accept the evidence as material connecting the appellant Pradeep Ram in commission of the offence. The evidence, which was collected by the police as regards the commission of kidnapping or abduction of Gulab Chand Sah appears unacceptable and unreliable upon which no judgment of conviction and order of sentence could have been passed.

10. In the result, we find that the appeal is meritorious and the same

is allowed by setting aside the judgment of conviction and order of sentence passed upon the appellants, namely, Pradeep Ram and Bhadur Ram. They are acquitted of the charge they had been held guilty of.

11. Appellant Pradeep Ram is on bail. He is discharged from the liability of his bail bond.

12. Appellant Bahadur Ram is in custody. He is directed to be released forthwith, if not wanted in any other case.

(Dharnidhar Jha, J)

Kanth/-

(Amaresh Kumar Lal, J)

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