

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.135 of 2006

[Against the judgment of conviction, dated, 13th January, 2006 and the order of sentence, dated, 16th January, 2006, passed by Shri Uma Kant Srivastav, Ist Additional Sessions Judge, Bhojpur, Ara, in Sessions Trial No.137 of 2005, arising out of Udwant Nagar (Gajrajganj) P.S. Case No. 55 of 2004]

Shashi Bhushan Yadav @ Bhusahan Yadav, son of Lt. Ramuna Yadav, R/o Village-Durjan Chak, P.S. Udwant Nagar, Dist-Bhojpur

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

with

Criminal Appeal (SJ) No. 162 of 2006

1.Jagdish Yadav, son of Late Dhanaraj Yadav, resident of village-Holi Tola, P.S. Udwant Nagar, Dist-Bhojpur.

2. Wakil Yadav, son of late Basudeo Yadav, resident of village-Holi Tola, P.S. Udwant Nagar, District-Bhojpur

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

Appearance :

(In CR. APP (SJ) No. 135 of 2006)

For the Appellant/s : M/S. Sanjay Kumar @ Manu, Animesh Kumar Mishra, Kishore Kunal & Mrs. Anjana

For the respondent : Dr. Mayanand Jha, A.P.P.

(In CR. APP (SJ) No. 162 of 2006)

For the Appellant/s : M/S Sanjay Kumar @ Manu, Animesh Kumar Mishra, Kishore Kunal & Mrs. Anjana

For the Respondent/s : Dr. Mayanand Jha, A.P.P.

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR.JUSTICE SUDHIR SINGH

ORAL JUDGMENT

(Per:HONOURABLE THE CHIEF JUSTICE)

Date: 02-07-2015



These two appeals arise out of the judgment dated 13-1-2006 rendered by the court of 1st Additional Sessions Judge, Bhojpur at Ara in Sessions Trial No.137 of 2005. Three persons i.e., Shashi Bhushan Yadav, Jagdish Yadav and Wakil Yadav were tried for the offence of kidnapping of Manoj Kumar for ransom on 29-3-2004 from village Halitola of Bhojpur district.

2. It was alleged that Manoj Kumar(P.W.2) was a student of matriculation in the Yadav Vidyapith situated at village Maulabagh. He attended the school to take practical examination on 29-3-2004. It was alleged that he was accompanied by Anil Kumar, son of Jagdish Yadav on way to home, and after they reached at Bara Gaon bridge, they found a jeep standing nearby in which three masked persons were sitting and Jagdish Yadav and Wakil Yadav were present. Manoj Kumar is said to have been dragged into the jeep and was taken to a place and kept there for fifteen days, and thereafter shifted to another place and kept there for ten days. He is said to have been released by the kidnappers on 27-4-2004 at 8 p.m., and when he was coming back to his home he met his father Lallan Singh(P.W. 5) on the way.

3. The information about the incident was first given by P.W.5 to the police in the form of fardbeyan on 9-4-2004. He stated



that he is employed in Military and on receiving information about kidnapping of his son ,he came and when they were taking steps to search the kidnapped boy, Wakil Yadav came to his house and stated that Manoj Kumar was kidnapped and his release can be secured only on payment of ransom, and thereupon P.W. 5 and others are said to have apprehended Wakil Yadav and together they proceeded to police station and handed over him to the police . It is also mentioned that P.W. 5 gave information to Gajrajganj(Udwantnagar) and Nawadah police stations about the incident, and general entry was made in the police stations.

4. The investigation was taken up and thereafter chargesheet was filed. Since the accused pleaded not guilty, the trial of the case was conducted The prosecution examined P.Ws. 1 to 7. No document was filed. On behalf of the defence D.Ws. 1 to 6 were examined.

5. Through judgment dated 13-1-2006, the trial court convicted the appellants for the offences punishable under section 364-A read with section 120-B of the Indian Penal Code and sentenced them to undergo rigorous imprisonment for ten years; and fine of Rs.1000/- each was imposed, in default of payment they were required to undergo simple imprisonment for three months. While A-1 Shashi Bhushan Yadav @ Bhusahan Yadav filed Cr.Appeal No. 135

of 2006, other accused filed Cr.Appeal No. 162 of 2006.

6. Sri Sanjay Kumar, learned counsel for the appellants submits that the case of the prosecution is just a concoction and there is hardly any truth in it. He contends that the informant (P.W.5), father of the alleged victim, was not consistent in his fardbeyan on the one hand and the deposition on the other hand. He submits that the evidence of Sajan Singh (P.W. 3) is at variance with that of the victim boy(P.W. 2), nephew of P.W.3. He submits that though two police officers were examined as investigating officers, they did not even furnish the basic facts pertaining to the case and still the trial court has convicted the appellants.

7. Learned counsel further submits that from the stage of the very furnishing of information about the alleged kidnapping till the so called release, everything is uncertain, and the version of the prosecution can not be accepted. He contends that according to P.W. 5, the general entries were got made in both the police stations about the incident; but the witness said exactly the opposite, in his deposition and he said that the information about the incident was furnished by P.W.3. It is also pleaded that notwithstanding this contradictory evidence, the investigating officer (P.W.7) stated that he is not aware of any G.D. entry. Another aspect pointed out by the learned counsel is that while according to P.W. 2, he furnished the

names of the accused to his father after his release, in the fardbeyan those names have come out, and this inconsistency was totally ignored by the trial court.

8. Dr. Mayanand Jha, learned Additional Public Prosecutor submits that by the very nature of the offence of kidnapping, there would be no clue till some headway is made in course of investigation. He submits that there is nothing unnatural in the evidence of various witnesses and small discrepancies are sought to be highlighted. Learned A.P.P. submits that the information about kidnapping was gathered after Wakil Yadav was handed over to the police station and every possible link was provided by the prosecution to constitute a complete chain of events.

9. The incident of kidnapping gives serious challenge to the prosecution. Many a time no fruitful results emerge in spite of huge efforts, and the investigation about the incident becomes significant after the release of the kidnapped person or after the information about any ghastly incident. In the instant case, the kidnapping of Manoj Kumar (P.W.2) is said to have taken place at 3 P.M. on 29-3-2004. In his evidence he straightway named at least two accused i.e., A-1 and A-2 i.e., appellants in Cr.Appeal No. 162/06 as the persons who dragged him into the jeep. He stated that three other persons were also there. His acquaintance with A-2 can be expected

since he worked as their farm labourer. A-2 is none other than the father of his friend Anil Kumar. If the acquaintance was so close, one does not normally expect the incident of kidnapping to take place. He did not name Shasi Bhushan Yadav, appellant in Cr.App. No. 135 of 2006.

10. The manner in which the information about the alleged kidnapping reached the place is somewhat uncertain. P.W. 3 is the uncle of P.W. 2. The father of P.W. 2 i.e., P.W. 5 is said to be at Hyderabad by virtue of his employment, as on the date of incident. The record is not clear as to when exactly P.W. 5 reached the station and the nature of the steps taken by him to search his son. From the fardbeyan dated 9-4-2004 it is evident that he did not have any idea till Wakil Yadav came to his house and stated that the release of P.W. 2 could be procured on payment of ransom of rupees three lakhs. It is important to mention that Wakil Yadav was a farm servant of P.W. 5. A suggestion was made in course of cross-examination that P.W. 5 implicated him because he was demanding wages.

11. If, in fact, Wakil Yadav has informed P.W. 5 the release of P.W. 2, it would not have been difficult to procure the other details as to the place where the accused is lodged or of the persons involved in the incident. Even if there was difficulty for P.W. 5 to get such information, the police could have certainly got that information.

Nothing of that sort is evident from the record.

12. In his statement, P.W. 5 stated that before he approached the police station for recording his statement, he furnished the information to both the police stations concerned, but was not clear as to the dates on which the entries were got made. However, in his deposition he stated that G.D. entry in the police station was got made by his brother (P.W.3) and not by himself. Added to this, in his deposition P.W. 7 (investigating officer) stated that he is not aware of G.D. entry because the information reached the police station for the first time only on 9-4-2004.

13. P.W. 2 stated that on being released by the kidnappers near the bridge, he was proceeding to the house at about 8 P.M. on 27-4-2004, and he met his father on his way. He categorically stated that for the first time he furnished the names of the kidnappers to his father at that time. If that be so, the source from which P.W. 5 gathered the names on 9-4-2014 when the fardbeyan was submitted is totally missing. This is not a case in which the release of the kidnapped boy was procured by the police through their intelligence or interference or through payment of ransom. If in fact Wakil Yadav was one of the kidnappers, and he was arrested on 9-4-2014, the question of kidnap to be continued till 27-4-2004, and the police not apprehending the other accused for week together, does

not arise.

14. The evidence of investigating officer is of hardly any use in this case. Except that he repeated the facts contained in the fardbeyan, he did not utter even a word as to what steps were taken after the F.I.R. was registered. We find that the evidence is at all not sufficient to conclude that the accused committed offence of kidnapping of P.W.2.

15. We, therefore, allow the appeals and set aside the conviction and sentence ordered against the appellants. The appellants of Cr.Appeal No. 162 of 2006 are on bail and they are discharged from their bail bonds. The appellant of Cr.Appeal No. 135 , namely, Shashi Bhushan Yadav is in jail, and he shall be released forthwith unless his detention is required in any other case.

(L. Narasimha Reddy,CJ)

B.Roy/-A.F.R.

(Sudhir Singh)

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