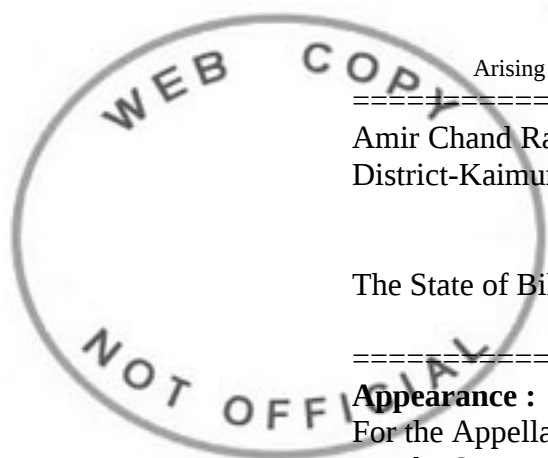




IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.448 of 2009

Arising Out of PS.Case No. 258 Year- 2003 Thana -Mohaniya District- BHABHUA (KAIMUR)

Amir Chand Ram son of late Rogi Ram, resident of village-Paspipara, P.S. Mihania District-Kaimur at Bhabhua

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

Appearance :

For the Appellant/s : Shri Rajni Kant Pandey, Advocate

For the State : Shri Abhimanyu Sharma, APP

CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA

and

HONOURABLE SHRI JUSTICE GOPAL PRASAD

ORAL JUDGMENT

(Per: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA)

Date: 13-07-2015

The solitary appellant Amirchand Ram sets up a challenge to the judgment of conviction and order of sentence respectively dated 13.03.2009 and 18.03.2009 passed by the learned Presiding Officer of Fast Track Court-II, Kaimur at Bhabua in Sessions Trial No.37 of 2005/50 of 2005 by which he was held guilty of committing offences under Sections 364A and 368 of the Indian Penal Code and after being heard on sentence was directed to suffer rigorous imprisonment for life under Section 364A Indian Penal Code. The learned trial Judge did not pass any sentence under section 368 of the Indian Penal Code.

2. There is no dispute that P.W.7 Shiv Shankar Shah was sleeping with his grandfather P.W.2 Jhuri Sah as also P.W.3



Surendra Pasi in the pump house belonging to P.W.2 Jhuri Sah, the informant of the case. It is also not disputed that P.W.7 Shiv Shankar Shah was kidnapped by six persons for ransom. It also appears from the record that P.W.7 Shiv Shankar Shah was either kidnapped or released from the captivity of his captors.

3. It was alleged by P.W.2 Jhuri Sah in his fardbeyan that two persons entered inside his pump house by pushing in the bamboo door which had been put on it and asked P.W.2 to show the way. P.W.2 was yet to respond when the criminals picked up P.W.7 Shiv Shankar Shah and pulled him out of the Chamber and when P.W.2 objected to he was pushed and shoveled. He was also threatened not to make any hue and cry, else was to be shot dead. P.W.3 still attempted to resist the taking away of his grand P.W.7 Shiv Shankar Shah which resulted again into his shoveling and pushing down by the criminals. P.W.2 raised alarms but the six criminals succeeded in taking away P.W.7 Shiv Shankar Shah.

4. On the fardbeyan of P.W.2, the FIR of the case Ext-2 was drawn up and the investigation was taken up. The investigating officer has not been examined and, as such, we are handicapped on many aspects of the case including the most important aspect of the case as to how P.W. 7 Shiv Shankar Shah was recovered. However, what we find is that the Police submitted chargesheet for the trial of

the solitary appellant which resulted in the impugned judgment.

5. Out of the seven witnesses, we have already noted that P.W. 7 was the victim of the occurrence, namely, Shiv Shankar Shah and P.W. 2 Jhuri Shah was the informant of the case who was the grandfather of P.W.7 Shiv Shankar Shah. P.W.3 Surendra Pasi was also sleeping with P.W.2 and P.W.7 in the same small pump house. P.W. 4 Dhukhi Sah and P.W.5 Nathuni Sah had deposed two facts that P.W.7 Shiv Shankar Shah had been taken away by some criminals who could not be identified by them. P.W. 1 Santosh Kumar was a former witness who had brought on record the fardbeyan of the case.

6. Out of the above witnesses, P.W.7 Shiv Shankar Shah had stated that after being abducted, he was confined at a particular village and he was recovered by the Police and at that time three persons were also arrested from there including this appellant Amirchand Ram. It was also stated by P.W.7 Shiv Shankar Shah that he was met to write two letters to his family members requesting them to pay up the ransom amount of rupees five lakhs and those letters were recovered from the pocket of this appellant Amirchand Ram when he was also arrested with the victim. During cross-examination, P.W.7 Shiv Shankar Shah stated that he had named the present appellant Amirchand Ram at the behest of one Madan Pasi



and at time when Madan Pasi had met him, the people of the administration i.e., the Police were also present there. Considering this line of evidence it becomes doubtful that indeed the victim was acquainted with the name and other details of the present appellant and also that the appellant could have been present there and was really identified by the victim. Besides the two letters which were recovered from him were brought on record through P.W.7 Shiv Shankar Shah but what we find is that while being examined under Section 313 Cr.P.C., this appellant was not put the circumstance that he was also found putting guard upon P.W.7 Shiv Shankar Shah and was arrested by the police at the time of recovery of P.W.7 Shiv Shankar Shah. Besides, the other circumstance that the appellant was found carrying two letters which were written by P.W.7 Shiv Shankar Shah requesting his family members to pay up an amount of rupees five lakhs as ransom was also not put as a circumstance against the appellant appearing from the evidence. The learned trial Judge has used the above two circumstances against the appellant while convicting him under Section 364A and 368 of the Indian Penal Code.

7. On considering the evidence of P.W.7 Shiv Shankar Shah and after also considering the circumstances just indicated on account of the non-compliance of Section 313 Cr.P.C., we find that the very judgment stands vitiated as also appears based on evidence

which could not be fully reliable.

8. In the result, the appeal succeeds. The solitary appellant Amirchand Ram is acquitted of the charge he had been held guilty of. The appellant Amirchand Ram is in custody, he shall be released forthwith, if not wanted in any other case.

(Dharnidhar Jha, J)

(Gopal Prasad, J)

Brajesh Kr./-Saif.

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