

IN THE HIGH COURT OF JUDICATURE AT PATNA

SLA No.30 of 2015

Arising Out of Complaint.Case No. -699 Year- 1995 Thana -null District- VAISHALI(HAJIPUR)

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Yogendra Prasad Singh, son of Late Jalim Singh, resident of Village Desari,
District- Vaishali and at present Village Dulami Bongadar, P.S.- Sonaha, District-
Ranchi (Jharkhand).

.... Petitioner

Versus

1. The State of Bihar
 2. Chandeshwar Prasad Singh, son of Late Jay Prasad Singh
 3. Awadhesh Singh, son of Late Ram Swarup Singh
 4. Shamdeo Singh, son of Late Chariter Singh
- All are resident of village- Ufraul, P.S. Desari, District- Vaishali.

.... Opposite Parties

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Appearance :

For the Petitioner : Mr. Ajay Kumar Thakur, Adv.
For the Opposite Parties : Mr. Bipin Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 16-09-2015

The instant Special Leave Application under Section 378(4) of the Code of Criminal Procedure (for short 'Cr.P.C.') is directed against the judgment and order dated 9th June, 2015 passed by the learned Additional Sessions Judge-II, Vaishali at Hajipur in Sessions Trial No. 82 of 2001 by which the Opposite Party Nos.2 to 4 have been acquitted from the charges under Sections 364, 368 and 387 read with 34 of the Indian Penal Code.

2. According to the complainant Yogendra Prasad Singh (petitioner), marriage of his son Ashok Singh was solemnized with the daughter of Shiv Dhani Singh, who is brother of accused Ram Swaroop Singh. It has been alleged that the marriage of



complainant's second son Pawan Singh was to be performed with the daughter of Rameshwar Singh on 28.05.1993 at Village Sherpur in the district of Vaishali. On 27.05.1993 at about 7.00 p.m. the complainant along with his sons Ashok Singh, Pawan Singh, Mukesh Singh, Ram Naresh Singh and others, namely, Krishna Kumar Munda, Jagatpal Rawani, Mansa Puran, Krishna Mohan Puran and Largub Ram proceeded for Sherpur and on 28.05.1993 at about 10.30 a.m. reached Sherpur at the house of Fekan Chaudhary where arrangement for the stay of the Barat was made. At about 11.00 a.m. the accused persons, namely, Ram Swaroop Singh, Chandeshwar Singh, Shyam Deo Singh, Ram Karan Singh and Bhuvneshwar Singh came there. Ram Swaroop Singh and Chandeshwar Singh are uncle-in-laws of his elder son Ashok Singh. They asked the complainant to accompany them in order to have talk with regard to *Gauna* of Ashok Singh's wife. When the complainant expressed his inability, Ram Swaroop Singh requested him to come to Jafrabad Thakurbari for talk. Thereafter, accused Awadhesh Singh came there with a Tempo over which the complainant, his son Ashok Singh, Krishna Kumar Singh Munda and Ram Naresh Singh went along with the accused persons, but instead of going to Jafrabad Thakurbari, diverted the Tempo towards Ufraul and sent back the two persons saying that they will return in the evening. Thereafter, the complainant and his son



were brought inside the house and were asked to execute a document of landed property situated at Desari and also take away his daughter-in-law (wife of Ashok Singh). It has further been alleged that he was confined in a room whereas his son Ashok Singh was taken away to unknown place and was threatened to be killed if he does not execute a deed of transfer upon which the complainant told them that the paper of immovable property is lying at village Dulmi within Sonahatu Police Station and then on 12.06.1993 the accused Ram Swaroop Singh proceeded with the complainant to village Dulmi and they reached there on 13.06.1993 where wife of the complainant informed that she filed a petition on 09.06.2013 before Desari P.S. in order to search her husband and son and after hearing this, the accused persons left the place by saying that if they want to see their son alive, they should refrain themselves from filing any case.

3. It has been further stated in the complaint that initially the complainant had filed the case at Khunti but due to jurisdictional error the learned Additional Chief Judicial Magistrate, Khunti dismissed the case on 05.03.1994. Thereafter, he preferred a revision which was also dismissed by the Judicial Commissioner, Chotanagpur, Ranchi vide order dated 04.04.1995, whereafter, the complainant was languishing in judicial custody in connection with a false case lodged by his daughter-in-law Anita Kumari and after

coming out from jail the present complaint case was filed.

4. On the basis of the aforesaid allegation made in the complaint, Complaint Case No.699 of 1995 dated 17.07.1995 was registered under Sections 363, 364, 368, 387 read with 34 of the Indian Penal Code.

5. The complainant was examined on solemn affirmation and after examination of the enquiry witnesses under section 202 Cr.P.C. the order of cognizance was passed against the accused persons on 23rd July, 1996 and thereafter the case was committed to the court of Sessions for trial. The charges under Sections 364, 368 and 387 read with 34 of the Indian Penal Code were explained to the accused to which they pleaded not guilty and claimed to be tried. Accordingly, the trial commenced.

6. During trial, the prosecution has examined altogether six witnesses, who are P.W.1 Persuram Singh, P.W.2 Krishna Mohan Puran, P.W.3 Mukesh Kumar Singh, P.W.4 Ram Naresh Singh, P.W.5 Lurgu Puran and P.W.6 Yogendra Prasad Singh (complainant/petitioner).

7. Let it be noted here that during trial accused Ram Swaroop Singh died, as a result of which proceeding against him was dropped vide order dated 28th March, 2012.

8. In support of defence, three witnesses were examined in

order to prove innocence of the accused persons. That apart, the accused persons pleaded innocence in their statements recorded under section 313 Cr.P.C.

9. After conclusion of trial and after hearing the parties, the trial court acquitted the accused persons of all the charges vide judgment dated 9th June, 2015.

10. Learned counsel for the petitioner has submitted that the trial court, without appreciating the evidence led on behalf of the complainant in correct perspective, came to a wrong conclusion that kidnapping did not take place as defence witnesses have stated that they saw Ashok Singh in a *Barati* and the complainant had at no point of time raised his voice during his movement from one place to another. He has further contended that the trial court while adjudicating the issues further erred in accepting the version of the defence by relying upon the hypothesis which has been indicated in the judgment recording acquittal that the complainant had enough opportunity to raise alarm against the accused persons while being on his way to his house for bringing documents pertaining to land to hand over the same to the accused persons. He has contended that there was ample material before the trial court against the accused persons, which have not been appreciated and therefore the impugned judgment and order is bad in the eye of law. On the basis of aforesaid

submissions, he pleads for leave to file appeal so that the accused persons may be suitably punished for the offence they have committed.

11. I have heard the learned counsel for the petitioner and perused the judgment of the trial court.

12. I find that the trial court after discussing the evidence of the witnesses examined on behalf of the prosecution and the defence in its minutest detail, recorded its findings in paragraph 12 to 17 of the impugned judgment which are as under :-

“12. In this case charges have been framed u/s 364, 368 and 387 read with section 34 of I.P.C. So far the offence u/s 364 of the I.P.C. is concerned, to establish an offence under this section, it must be proved that the person charged with the offence had the intention at the time of abduction that the person abducted would be murdered or would be so disposed of as to be put in danger of being murdered. In this respect firstly I would like to consider the previous relationship between the parties and the circumstances thereon. Admittedly as per the case of the complainant and the evidences thereon, it is consistent case of the prosecution that the accused persons came at Sherpur at the darwaza of Fekan Chaudhary, where the complainant had come with barati in connection with the marriage of his second son Pawan with the daughter of one Rameshwar Singh of Sherpur Village and the complainant was asked by the accused persons to have a talk with regard to settle the ‘gauna’ of their daughter, who happens to be the daughter in law of the complainant, married with complainants elder son Ashok Singh and for the purpose, the complainant, his son Ashok Singh were taken to Ufraul village, which is the sasural of Ashok Singh. Then, it is to be seen that whether the complainant and his son were forcefully made to go by any



deceitful means induced to go, with an intent as is required to constitute an offence u/s 364 of I.P.C. On this count, from the evidences I found that the complainant or his son were neither forcefully taken away by the accused persons nor there was any inducement by deceitful means, as is also evident from the fact that the complainant accompanied with him one of his associate Krishan Kumar Munda and his brother-in-law Ram Naresh Singh, and went to the house of the accused persons, who are none other than the Samdhi of the complainant and father-in-law of his son Ashok Kumar. Admittedly, there was some dispute with regard to 'gauna' of the daughter-in-law of the complainant and in that regard the complainant was evading talk with the accused persons. So, in the backdrop of the relationship as also the circumstances thereon, it would not be said that the complainant and his son were abducted by the accused persons. It has also been argued on behalf of the defence that Ashok Singh, who is shown to be missing, was the husband of Anita Devi who for demand of dowry was subjecting her to cruelty and ousted her from the matrimonial house, for which Desari P.S. Case No.138/92 was filed u/s 498A of I.P.C. against the complainant and his family members, in which the complainant was sent to Jail and his son Ashok Singh, who is the husband of Anita Devi, to save himself from the case, absconded and in order to pressurize, the complainant of the instant case filed the present concocted case. This argument of the defence also finds strength from the prosecution witnesses as all the witnesses examined including the complainant have stated this fact that complainant and other family members were held guilty in the aforesaid case and were convicted for the same. The complainant himself stated that his daughter-in-law filed case against him and others on 5.8.93 and he filed the present case on 17.7.95. Though he has also stated that he filed the case earlier at Khunti (Ranchi) which was dismissed due to lack of jurisdiction, then the instant case was filed at Hajipur Court. The prosecution story also appears to be unbelievable on the ground that Ashok Singh was again at 6.00 P.M. brought to



Sherpur where the marriage of his brother was to be solemnized and he was again brought back at 1.00 A.M. in the night by the accused persons. It is strange that why he did not inform any one at the place of marriage at Sherpur with regard to the incident of his abduction or for that matter of his father and returned alongwith the accused. It also does not stand to reason that P.W.3 Mukesh Kumar, who happens to be the younger son of the complainant and P.W.4 Ran Naresh Singh, who happens to be the Brother-in-law of the complainant and who is also alleged to have accompanied the complainant to the house of accused, did not raise any alarm with regard to any such occurrence and as per their own statements they returned from the place of barati itself, out of fear. The complainant instead of filing F.I.R. filed a complaint, no search was made to trace the complainant or his son Ashok Singh, by his relatives and sons, when this fact was known to the complainants side that where the complainant Yogendra Singh and his son Ashok Singh were brought and as such no attempt to trace out the victims from the house of accused was made.

13. It has been contended on behalf of the complainant that Desari and Jandaha Police were also informed in this regard by his wife, case was instituted and also enquired upon. But nothing in this context have been produced to support on behalf of prosecution rather to the contrary the prosecution witnesses were suggested that enquiries were made by the Desari and Jandaha Police at the instance of S.P. Vaishali and the police found the case of the prosecution as fake and accordingly submitted report to that effect. The Defence has though filed those reports but as these documents could not be exhibited, hence could not be looked into. But withholding of these reports by the prosecution certainly creates a serious doubt, so far the truthfulness or veracity of the prosecution case is concerned. Moreover, to support of its case, the prosecution has not examined any local or independent witnesses and one of the local witness examined as P.Ws. turned hostile, and on the other hand the defence has examined three witnesses

from that locality who were also participants in the barati of the complainant and they have stated that no such occurrence of kidnapping took place and they have seen Ashok Singh some months ago who was having beard over his face, to conceal his identity.

14. It has also come in the evidence of P.W.6, the complainant that accused Ram Swaroop Singh took him to Ranchi for fetching papers on the bus and went to complainant house, but in the way or at his house, he nowhere raised any alarm that he has been kidnapped.
15. Thus from the foregoing discussions, I find that the prosecution failed to bring home the charges u/s 364 of I.P.C. against the accused persons, as it could not be established beyond reasonable doubt that the complainant and his son were abducted/kidnapped with a view to murder or dispose them in such a way that they might be murdered.
16. So far the charge u/s 368 of I.P.C. is concerned, it presupposes that the offence of kidnapping or abduction has taken place, so that anyone wrongfully concealing or confining the person kidnapped or abducted is guilty of an offence u/s 368 of I.P.C. But as discussed above, when kidnapping is not proved, wrongfully confining or concealing does not constitute an offence u/s 368 of I.P.C. And accordingly, I find that prosecution has failed in bringing home the charge u/s 368 of I.P.C. as well.
17. Likewise, on the basis of the foregoing discussions and from perusal of the evidences on record, I find that the charge u/s 387 of I.P.C. for committing of extortion has also not been proved against the accused persons beyond shadows of reasonable doubts.”

13. I find that the trial court has taken a plausible view. It is well settled proposition of law that in order to assail any judgment of acquittal, there must be “substantial and compelling reasons” as well

as “good and sufficient grounds” and “very strong circumstances” as in the case of acquittal there is double presumption in favour of the accused. Firstly, presumption of innocence is available under fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law and secondly, the accused having secured his acquittal the presumption of his innocence in due course is re-affirmed and strengthened by the trial court. It is well settled that even if two reasonable conclusions are possible on the basis of evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.

14. In the instant case, I find that the trial court has given clear, cogent and convincing reasons to acquit the accused. The judgment of the trial court can neither be held to be erroneous nor perverse.

15. In that view of the matter, leave to appeal is refused.

(Ashwani Kumar Singh, J)

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