

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No. 885 of 2009

Against the judgment of conviction dated 01.06.2009 and order of sentence dated 05.06.2009 passed by Shri Bhubna Nand Jha, learned 2nd Additional Sessions Judge, Sitamarhi in S. Tr. No. 190 of 2008 arising out of Riga P.S. Case No. 12 of 2008

Arjun Sah, Son of Late Baijnath Sah, Resident of village – Sakara Bazar, P.S. - Ramgarhwa, District – East Champaran, Motihari

.... Appellant

Versus

The State of Bihar

.... Respondent

Appearance :

For the Appellant : Shri Aaruni Singh, Amicus Curiae

For the Respondent : Sushri Shashi Bala Verma, A.P.P.

CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA

and

HONOURABLE SHRI JUSTICE GOPAL PRASAD

ORAL JUDGMENT

(Per: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA)

Date: 20-07-2015

Rahul Kumar (P.W.3), son of Brij Kishore Sah (P.W.4)

was enrolled as a student of Ace Public School, Riga. He was about 13 years of age and was studying in Class-III. On 21.01.2008, he was taken away from the school. He was living there as a boarder. The information about P.W.3 going missing or being kidnapped by some unknown person was given to his father Brij Kishore Sah by the Principal of the school, P.W.6 Rajnis Kumar @ Rajaram Raut, who had stated that an imposter had approached Rahul Kumar, (P.W.3) posing himself as his uncle and took him away.

2. The informant stated that he made a hectic search for his son at all imagined places including those of his relatives, but

in vain. P.W.4 Brij Kishore Sah stated that victim Rahul Kumar had put on a dim-white-colour coat and a toffee colour full-pant with a white check shirt and he had put on a pair of hawai-chappals.

3. The written report (Ext-2) was filed before the Officer-in-Charge of Riga police station on 21.01.2008 at 8 P.M. and on that basis Ext-3 the FIR of Riga police station case no.12 of 2008 was drawn up to investigate the information. The investigation was under taken by P.W.7 S.I. Kanhaiya Prasad who had inspected the place of occurrence, i.e., the premises of Ace Public School and had examined the witnesses. Subsequently, on 21.01.2008 he could learn from the Officer-in-Charge of Chiraiya police station in East Champaran that the appellant along with the victim Rahul Kumar as also with another child, who had also been kidnapped by the present appellant Arjun Sah, were found traveling in a truck and he had been arrested. The appellant Arjun Sah along with the two kidnapped children was brought to Riga police station. Victim Rahul Kumar P.W.3 was sent for medical check-up as also for recording his statement under Section 164 Cr.P.C. by a Magistrate.

4. Before the appellant had been arrested and the recovery of the victim Rahul Kumar had been made, what appears from the evidence of P.W.7 Kanhaiya Prasad is that special teams were formed by the District Police, Sitamarhi to go on a hunt for the

child so as to recovering him, but all efforts went in vain. Lastly, it was a chance recovery of the victim in the company of the present appellant Arjun Sah.

5. On the examination of P.W.3 Rahul Kumar by Dr. Prem Pushpa Lohiya (P.W.8) no definite evidence of commission of unnatural offence was found. In fact, Dr. Prem Pushpa Lohiya (P.W.8) pointed out that the anal canal and the surrounding structures were found normal with a single abrasion posteriorly found which might be give some indication as if the child had been subjected to unnatural offence.

6. The statement of witnesses coupled with the medical evidence report of P.W.8 Dr. Prem Pushpa Lohiya as also the information given to the investigating officer P.W.7 S.I. Kanhaiya Prasad by different witnesses that calls had been made by the appellant seeking the payment of ransom amount of Rs.5,00,000/- . Satisfied the investigating officer to send the present appellant up for his trial for offences under Sections 364A and 377 of the Indian Penal Code.

7. The appellant was put on trial, accordingly, for the two offences after being duly indicted in Sessions Trial No.190 of 2008 and by judgment dated 01.06.2009, was held guilty of committing the two offences. After hearing the appellant under

Section 235 Cr.P.C. on the quantum of sentence, the appellant was directed to suffer rigorous imprisonment for life as also rigorous imprisonment for ten years for having been found guilty under Sections 364A and 377 Indian Penal Code respectively. The appellant appeals to this Court through the present jail appeal.

8. The appeal having been preferred from jail, Shri Aaruni Singh was appointed Amicus Curiae to assist the Court and accordingly, we have heard Shri Aaruni Singh on behalf of the appellant and Sushri Shashi Bala Verma, learned counsel appearing on behalf of the State.

9. Shri Singh castigated the evidence of the witnesses especially the victim Rahul Kumar and his father Brij Kishore Sah along with that of P.W.6 Rajnis Kumar @ Rajaram Raut who happened to be the Principal of Ace Public School, Riga on 21.01.2008. It was submitted by Shri Singh that the written report was scribed by P.W.6 Rajnis Kumar @ Rajaram Raut and nowhere in that document the informant had mentioned that P.W.6 was even remotely related to him. But when deposing in Court P.W.4 was stating that P.W.6 was his cousin and he had scribed the written report Ext-2. It was contended that if at all P.W.6 was as closely related to the informant and, as such, to the victim, then he could have very easily identified the appellant as not being any how related to Rahul Kumar



and ought not to have allowed him to exit the school so as to be taken away by the appellant. Shri Singh was further pointing out that there was a complete lack of evidence that any demand for ransom was made by the appellant and that evidence which had come from some interested witnesses was refuted by the appellant during his questioning under Section 313 Cr.P.C. It was also contended that the Officer of Chiraiya police station within the jurisdiction of East Champaran District was never examined and, as such, there was a complete lack of evidence as to how the appellant was arrested and indeed he was found having the custody of P.W.3 and another child whom also he had allegedly kidnapped. It was, lastly, submitted that the medical evidence of P.W.8 Dr. Prem Pushpa Lohiya was too scant to justify raising inference that the child Rahul Kumar (P.W.3) had been subjected to unnatural offence. On these submissions, Shri Singh submitted that the evidence was too fragile to justify the appellant being convicted for the offences and this Court ought to acquit him for the charges he had been held guilty of and punished.

10. Sushri Shashi Bala Verma, learned Additional Public Prosecutor was contesting the submissions of Shri Singh very seriously by pointing out that the evidence of P.W.3 Rahul Kumar was equal on footing with that of an injured witness and the ordeals which were undergone by him could be narrated only by P.W.3 after



being taken away from the school. The victim appears remaining under the custody of the appellant and it was within the special knowledge of the appellant as also within the special knowledge of the victim as to how things had turned out during the period while P.W.3 was in the custody of the appellant. Submission was that other witnesses were not as material as regards the evidence of P.W.3 because they could be giving evidence only on one fact that victim Rahul Kumar was kidnapped or taken away while he was living in the school first time on 21.01.2008. The evidence was also sufficiently coming from P.W.4 Brij Kishore Sah, P.W.5 Sangeeta Devi, P.W.3 the victim Rahul Kumar as also P.W.6 Rajnis Kumar @ Rajaram Raut that calls were made by the appellant to them seeking the payment of Rs.5,00,000/- as ransom for releasing the victim Rahul Kumar and Rahul Kumar had also stated that he was forced to make calls to his parents informing them the need to pay of the ransom amount. Submission was that the very finding of the victim in the custody of the appellant was itself sufficient evidence of not only kidnapping but the allegations that the appellant had subjected the victim to unnatural offence.

11. P.W.1 Mahesh Kumar @ Ram Babu Sah was the uncle of P.W.3 Rahul Kumar and brother of P.W.4 Brij Kishore Sah. P.W.2 Sikander Sah was the grand-father of the victim Rahul Kumar



and father of P.Ws.1 and 4. P.W.4 Brij Kishore Sah, the informant of the case, father of P.W.3 Rahul Kumar, while P.W.5 Sangeeta Devi was the mother of Rahul Kumar. Thus, what appears from the array of witnesses no.1 to 5 is that they were closely related by blood and were kiths and kins of each other. P.W.6 Rajnis Kumar @ Rajaram Raut was the Principal of the school and he had given the evidence on the initial part of the story that this appellant Arjun Sah had appeared before him and had asked him to allow victim Rahul Kumar to accompany him as he was required to meet his *Bua* who was present at Riga railway station. Initial resistance by P.W.6 Rajnis Kumar @ Rajaram Raut vanished on persistent request coming from the present appellant and P.W.6 gave in to the request of the present appellant and allowed Rahul Kumar to accompany him, subsequently, to learn that he did not come back and was definitely kidnapped. Sometimes after P.W.6 received a call at about 4 A.M. on a particular day as may appear from his evidence. The call was given by this appellant asking him to ensure the payment of Rs.5,00,000/- by the parents of the victim when only the victim could be released. The evidence of P.W.1 Mahesh Kumar @ Ram Babu Sah, P.W.2 Sikander Sah, P.W.4 Brij Kishore Sah and P.W.5 Sangeeta Devi also support the evidence of P.W.6 as regards taking away of Rahul Kumar by this appellant. There was no names initially as to who had done it and every one was



groping in dark as to who could be the person to have indulged into offence of kidnapping and as may appear from the evidence of these witnesses, this appellant had given calls not once but on multiple occasions to the parents of the victim and had also allowed the victim to talk to them who had weepingly informed his mother that in case of non-payment of the desired amount of Rs.5,00,000/- his life was in peril.

12. The victim himself has narrated the story right from being taken away up to his recovery by the police of Chiraiya police station and his ordeal of being confined at different places by the appellant and the further ordeal of being subjected to trauma of being unnaturally assaulted. His evidence also reveals that during his captivity, this appellant had forced him to talk to his parents and once had directed his father to keep Rs.70,000/- in a bundle with some quantity of *Chura* and throw it at a particular railway station and, accordingly, the bundle was thrown by the father of the victim which was picked up by the appellant. We do not get support from P.W.4 to that particular part of the story, but we get ample support from the evidence of P.W.3 Rahul Kumar as regards the demand of paying up Rs.5,00,000/- as the amount in lieu whereof they could be getting their son back. It is a long cross-examination made by the appellant himself of P.W.3 and on going through each and every line of that



cross-examination, what we find was that the victim P.W.3 revealed the trite truth of the offence of being taken away up the stage of being recovered by the police in the company of the appellant. P.W.3, as was submitted by Sushri Verma, has to be equated with an injured witness because he was the person who had quite experienced the ordeals during the whole period he had remained in the custody of the present appellant for almost a week. He had been threatened. He had been beaten up and he had been criminally assaulted unnaturally. He did not have any axe to grind. He was a child of about 13 years. He was prosecuting his study in a boarding school in Class-III and while he was washing his hands and mouth at the tube-well sunk in the premises of the school, this appellant had approached him while the appellant also had gone there for taking water and washing his hands and after getting acquainted, succeeded in taking the victim to Riga railway station and in between he had sold his bicycle by which he had carried the child from the school to go to different places within the district of East Champaran and had hired rooms in the hotel to confine the boy with him so as to unnaturally assaulting him. We do not find any reason as to why we should not believe P.W.3 Rahul Kumar. He appears a natural witness who did not hesitate in narrating the instance and who does also not appear adding up a fact so as to heightening the allegations. He appears completely trustworthy and

his evidence, we accept, as such.

13. It may be true that P.W.8 Dr. Prem Pushpa Lohiya might not have found the injuries which could have appeared on repeated acts of commission of unnatural offence upon the victim Rahul Kumar, but we have also to inform ourselves that the child was recovered sometimes on 28th of January, 2008 and Dr. Prem Pushpa Lohiya had examined him on the 31st of January, 2008. He has very categorical in rendering his opinion in paragraph-3 of his deposition that there was a tenderness but as unnatural offence was said to have been committed ten days ago, so there was no chance of presence of sign of commission of the offence unless there had been any rupture in the anus. This particular opinion rendered by P.W.8 Dr. Prem Pushpa Lohiya itself is an explanation to the submissions of Shri Singh that no injury corroborating the allegations that the child had been subjected to unnatural offence was found by P.W.8. If the offence had been committed ten days back and the child had been examined after that period considering the part of the body, we have to be appreciative of the fact that any injury which could have appeared must have healed fast as the affected organ bears delicate tissues with regenerate fast. Still Dr. Prem Pushpa Lohiya had found a slight tenderness in the anus posteriorly and that to us appears suggestive of the past acts of commission of unnatural

offence upon the victim Rahul Kumar.

14. The victim P.W.3 Rahul Kumar was taken away after not only being duped him but also after duping his custodian P.W.6 Rajnis Kumar @ Rajaram Raut. It was contended that Rajnis Kumar @ Rajaram Raut was claimed to be one of the relatives of P.W.4 and if he was so, then he ought not to have allowed victim Rahul Kumar to be taken away from the school. P.W.4, of course, said that P.W.6 was his cousin but we do not find P.W.6 confirming that particular statement of P.W.4 that he was anyhow related to him. On a mere ex-parte evidence of Brij Kishore Sah P.W.4 without getting it corroborated from any source and especially from P.W.6 Rajnis Kumar @ Rajaram Raut, we are not going to accept that P.W.6 at all was related to P.W.4 Brij Kishore Sah. This appears more evident because the title of P.W.4 "Sah" differs substantially from that of P.W.6 whose title is 'Kumar @ Raut'. We do not know what was the reason when P.W.4 stated that P.W.6 was his cousin. Probably he was fearful of the findings of the Court as regards the scribing of Ext-2, the written report that unless he had claimed P.W.6 to be his relative, the Court may not accept his claim that it was scribed by P.W.6. This is our conjecture only, it may not be a finding. But, we are sure that P.Ws.4 and 6 were never related to each other and, as such, P.W.6 did not have any reason to know the close relatives of P.W.4 who could

be the uncle of victim Rahul Kumar.

15. On a reappraisal of the evidence of the witnesses, we find that the learned trial Judge had rightly convicted the appellant for offences under Sections 364A and 377 Indian Penal Code and had passed the appropriate sentences upon him. The appeal, as such, appears of no merit and the same is dismissed.

16. Shri Aaruni Singh, learned counsel appearing on behalf of the appellant as Amicus Curiae has very ably assisted us in hearing the present appeal and he had argued the appeal extremely well. We record our appreciation of his effort. In token thereof, we direct the payment of one fee of hearing by Patna High Court Legal Services Committee to Shri Singh.

(Dharnidhar Jha, J)

(Gopal Prasad, J)

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