

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No. 883 of 2009

Against the judgment of conviction, dated 05.09.2009, and the order of sentence, dated 08.09.2009, passed by Shri Anil Kumar Singh, Additional Sessions Judge, Fast Track Court No. V, Samastipur, in Sessions Trial No. 156 of 2004, arising out of Samastipur Town Police Station Case No. 444 of 2002

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Suresh Choudhary, Son of Sahdeo Choudhary, resident of village – Jail Road Tinkothia, Police Station – Mithanpura, District – Muzaffarpur

.... Appellant

WITH

Criminal Appeal (DB) No. 944 of 2009

1. Ajai Kumar Rai, Son of Late Bindu Rai
2. Pramod Rai, Son of Late Ram Bahadur Rai

Both are resident of village – Musepur, P.S. – Kalyanpur,
District - Samastipur

.... Appellants

WITH

Criminal Appeal (DB) No. 1015 of 2009

Shatrughan Prasad @ Shatrugha Prasad Shrivastav, Son of Parmeshwar Prasad, resident of mohalla – Malighat, P.S. – Ahiyapur, District - Muzaffarpur

.... Appellant

Versus

The State of Bihar

.... Respondent

(In all the three Appeals)

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Appearance :

(In CR. APP (DB) No. 883 of 2009)

For the Appellant : Shri Vindhya Keshri Kumar, Sr. Advocate
Shri Rajendra Kumar Jain, Advocate

(In CR. APP (DB) No. 944 of 2009)

For the Appellants : Shri Ajay Kumar Thakur, Advocate
Shri Imteyaz Ahmad, Advocate
Shri Nilesh Kumar, Advocate
Shri Ravi Ranjan, Advocate

(In CR. APP (DB) No. 1015 of 2009)

For the Appellant : Smt. Punam Srivastava, Advocate
Shri Pradeep Kumar Sinha, Advocate
Shri R. K. Jain, Advocate

For the State : Shri Dilip Kumar Sinha, A.P.P.
Susri Shashi Bala Verma, A.P.P.
Shri Abhimanyu Sharma, A.P.P.
(In all the three Appeals)

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CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA
and
HONOURABLE SHRI JUSTICE GOPAL PRASAD
ORAL JUDGMENT
(Per: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA)
Date: 16-07-2015

On the basis of written report of P.W. 5, dated 25.09.2002 a case was registered and on investigation the four appellants were jointly put on trial by being charged jointly under Sections 364A/34 of the Indian Penal Code. Appellant, Shatrughan Prasad @ Shatrugha Prasad Shrivastav was distinctly charged under Sections 364A and 120B of the Indian Penal Code. The trial was held by the learned Presiding Officer of Fast Track Court No. V, Samastipur vide Sessions Trial No. 156 of 2004. By judgment delivered on 05.09.2009, the four appellants of the three appeals were convicted of committing offence under Sections 364A/34 of the Indian Penal Code. Likewise, appellant Shatrughan Prasad @ Shatrugha Prasad Shrivastav was also held guilty of committing the offence under Section 364A/120B of the Indian Penal Code. The appellants were heard on sentence on 08.09.2009 and the learned judge directed all the appellants to suffer rigorous imprisonment for life as also to pay fine of Rs. 10,000/- each, else, to suffer imprisonment for two years. As regards the conviction of appellant

Shatrughan Prasad @ Shatrugha Prasad Shrivastav under Sections 364A/120B of the Indian Penal Code, the learned judge did not pass any separate sentence upon him and held that the sentence already awarded to him for committing offence under Sections 364A/34 of the Indian Penal Code was to take care of the offence committed by him. The three appeals have been preferred by the four appellants to set up a challenge as regards the correctness of the findings of their guilt and the appropriateness of the sentences passed individually upon them.

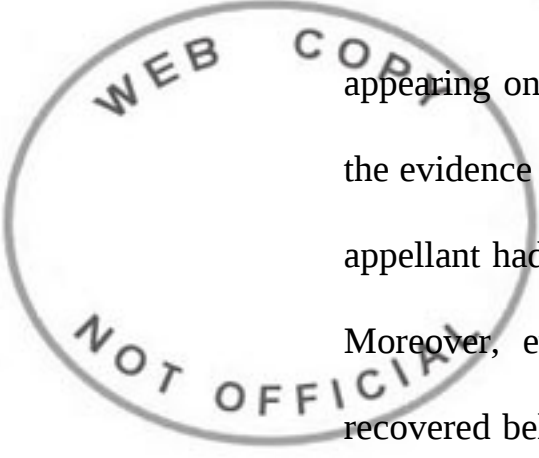
2. We have heard the three appeals together and are disposing them of by this common judgment.

3. The gist of the written report was that Anand Kumar (PW6) who was the adopted son of informant Sheo Ram Prasad @ Lakkhi Babu had, after closing down his jewellery shop, went to the medicine shop of Shashidhar Kumar (PW2) who was related as his cousin. He left the medicine shop of PW2 for his home and when he was in the way opposite the clinic of Dr. A.K. Gupta, a Tata Sumo of deep blue colour, looking black during the night, dashed against his scooter. Five persons were there in the Tata Sumo out of whom three rushed out of the vehicle and started dragging the victim (PW6) towards the Tata Sumo. Anand Kumar (PW6) set up some resistance and attempted to wriggle himself out of the clutches of his captors. A little child Chandan Kumar (PW8) who was accompanying PW6 rushed towards the

medicine shop of PW2 to inform him about the incident on which PW2 also rushed towards the scene of occurrence but the criminals started firing shots. PW2 was scared and he retreated back to his shop to telephonically inform the police about the incident, but the criminals had succeeded in putting PW6 into the vehicle and to speed away from there.

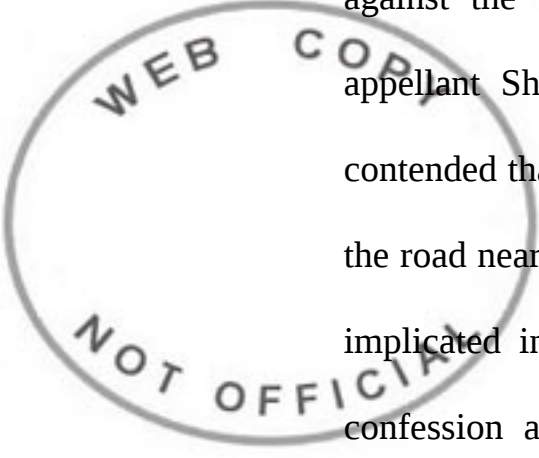
4. The case was investigated into by PW9, S.I. Girindra Kumar Sharan. We regret to note that the police officer had messed up the collection of material evidence during investigation so much so that it is hard to raise any definite inference. He had probably come into the witness box pre-determined to ensure that the accused persons were acquitted. He deposed in the trial court but his evidence indicates as if that was of no avail for trial Court or for us. He said that there were three places of occurrence one being the road from where PW6 was picked up, the other from where the victim was recovered and the third from where some of the clothes of the victim carrying some signs of injury being inflicted to PW3 were recovered. However, while deposing in court, PW9 did not give any clue as to how exactly he had reached the three places. Whatever he had stated in paragraph-13 of his evidence appears all the more destroying the effect of his evidence given in earlier paragraphs and makes it very inconsistent with the material facts which were produced by him. At any rate he submitted charge sheet for the trial of the four appellants and the trial as noted above ended in the

impugned judgment.



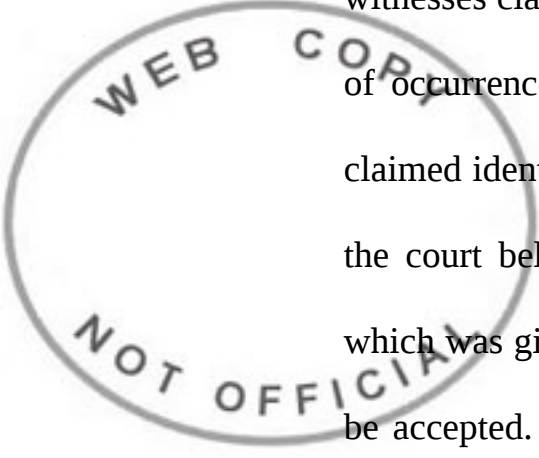
5. Shri Vindhya Keshri Kumar, the learned senior counsel appearing on behalf of the appellant Suresh Choudhary took us through the evidence of witnesses, specially, PWs. 6 and 9 and submitted that the appellant had not been identified as one of the kidnappers of the victim. Moreover, even if assuming that the house from where PW6 was recovered belonged to this appellant, there was lack of evidence that the appellant was himself residing in that house, rather the evidence indicated as if the appellant had two houses and one from where the victim of the offence was recovered was let out to different tenants. As such, the appellant Suresh Choudhary may not have the necessary conscious knowledge about the act of kidnapping, the act of wrongfully confining the victim and ultimately his recovery from there. Submission, as such, was that appellant Suresh Choudhary has to be acquitted.

6. As regards appellant Ajay Kumar Rai and Pramod Rai, it was contended by Shri Ajay Kumar Thakur, the learned counsel appearing on their behalf that the two were identified for the first time in court by Gauri Shankar Thakur (PW1) and Shashidhar Kumar (PW2) and the worst was that the victim who was claimed to be confined by the two appellants who were also putting guard upon him did not name the two appellants in any connection. Moreover, the investigating officer (PW9) also did not state that he had arrested the two appellants from the house



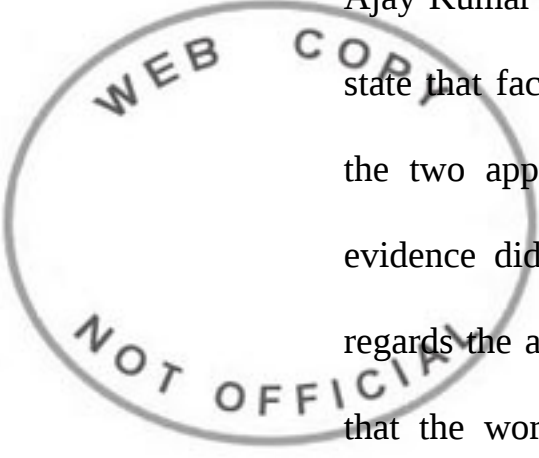
of appellant Suresh Choudhary. Submission was that the evidence as against the two appellants, as such, was also lacking. As regards appellant Shatrughan Prasad @ Shatrugha Prasad Shrivastav, it was contended that a driving licence belonging to the appellant was found on the road near the place of occurrence and on that basis the appellant was implicated into the offence. The police had created the evidence of confession against appellant Shatrughan Prasad @ Shatrugha Prasad Shrivastav and had claimed to have made recoveries of the victim and other articles but when those facts stated by PW9 were to be stitched up together then the facts were not leading to any concrete conclusion. Submission was that appellant Shatrughan Prasad @ Shatrugha Prasad Shrivastav requires to be acquitted in lack of viable and acceptable evidence.

7. Out of the nine witnesses, two witnesses, namely, Manoj Kumar (PW4) and Rajesh Kumar (PW7) were declared hostile. Gauri Shankar Thakur (PW1) and Shashidhar Kumar (PW2) who ran medical shops and who had rushed to the scene of occurrence after being informed by Chandan Kumar (PW8) about PW6 being kidnapped identified two appellants Ajay Kumar Rai and Promod Rai in Court. Their individual evidence in cross-examination pointed out that they had never seen the two appellants before the date of occurrence and they had again not seen the two after the date of occurrence and also before the



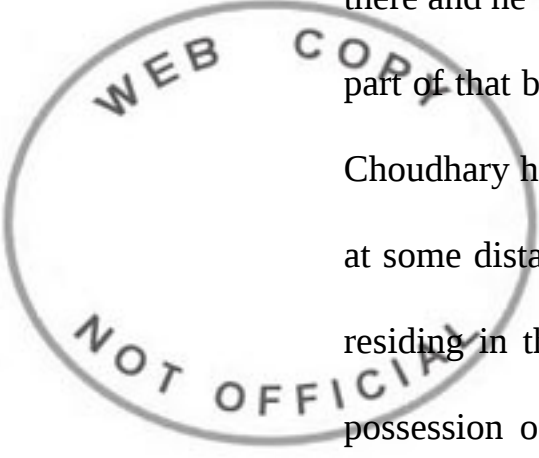
day they had deposed in court. Thus, what appears is that the two witnesses claimed having seen the appellants for the first time on the day of occurrence and the day on which the two witnesses PWs. 1 and 2 claimed identifying the two was on the day they were giving evidence in the court below. We want to note that the evidence of identification which was given by PWs. 1 and 2 was not only scant but was difficult to be accepted. It was night at about 8.15 P.M. There was no source of light as appears from the evidence of witnesses. The part of the occurrence which had been witnessed by PWs. 1 and 2 could have given them only a flickering glimpse of the criminals. As such, it could have been very difficult for any person, specially, PWs. 1 and 2 who could have been very excited in their minds after finding one of their known kith and kin being kidnapped by criminals and that state of excitement in the minds of the two witnesses could have made it very difficult for them to retain the identifying features of any of the criminals. As such, that momentary flickering observation of the criminals could not have been enough to identify them again after a lapse of four years when they had not the occasion to see either of the two appellants again. In that view of the matter, we do not find it safe to place reliance upon the evidence of PWs. 1 and 2 as regards their claim for identifying appellant Ajay Kumar Rai and Pramod Rai.

8. As regards the evidence of PW6, the victim of the



offence, if he was at all recovered in the company of the two appellants Ajay Kumar Rai and Pramod Rai, anyone could have supposed PW6 to state that fact in court and again should have supposed him to identify the two appellants in court during his deposition. PW6 during his evidence did not identify any of the appellants in any connection as regards the acts of picking up and wrongfully confining him. Not only that the worst was that PW9, S.I. Girindra Kumar Sharan who had investigated the case and who claimed to have recovered the victim and also to have arrested the two accused persons from the site of confinement of the victim also does not show that he had arrested Ajay Kumar Rai and Pramod Rai from the house of appellant Suresh Choudhary. This is the state of evidence and in this state of evidence, we find it very difficult to uphold the conviction of appellants Ajay Kumar Rai and Pramod Rai.

9. Coming to the case of appellant Suresh Choudhary, as per the evidence of PW9, the victim was confined in his house. It was a three-story building having multiple apartments in it. Each apartment having been let out to tenants, the part of the building from where Anand Kumar (PW6) was recovered appears a two room apartment and Anand Kumar was recovered from one of the rooms. During his cross-examination by the defence in paragraph-33 and onwards, PW9 had stated that he did not find Suresh Choudhary present in his house nor did

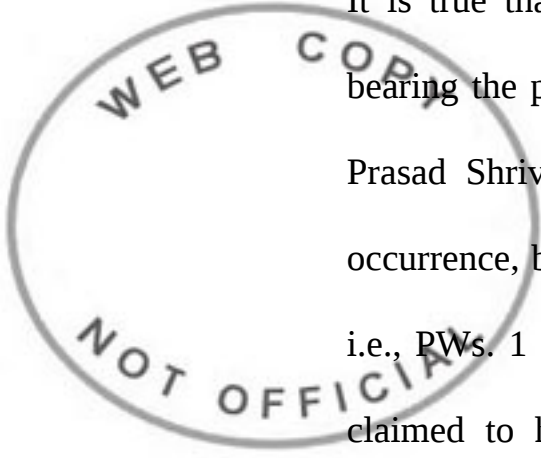


he find any of his family members, like, his wife or children present there and he was also not sure that Suresh Choudhary was residing in any part of that building. The evidence of PW9 further indicates that Suresh Choudhary had yet another building somewhere in the same vicinity, but at some distance and PW9 was not sure that Suresh Choudhary was not residing in the other building. If this was the evidence as regards the possession of the building from which the police had claimed having recovered the victim Anand Kumar, then we could not be sure that indeed Suresh Choudhary had any conscious information about the commission of the offence as regards the abduction of Anand Kumar or his confinement in the house. The evidence against appellant Suresh Choudhary appears too faint to raise any strong inference of his culpability. In that view of the evidence, we find ourselves unable to sustain his conviction for the offence he had been sentenced to rigorous imprisonment for life as also with an amount of fine as indicated at the very out of the present judgment.

10. Coming to the case of appellant Shatrughan Prasad @ Shatrugha Prasad Shrivastav, the police had, of course, made out the story that he had led it to different places for recovery of the victim and recovery of other articles, like, a pant which was allegedly belonging to the victim and which as per the evidence of PW9 was bearing blood stains which were indicative of the fact that a shot had been fired at

Anand Kumar who was injured in his foot and had bled from the injury.

It is true that the police had stated that a driving licence which was bearing the photograph of appellant of Shatrughan Prasad @ Shatrugha Prasad Shrivastav was recovered from somewhere near the place of occurrence, but in absence of identification, specially, by two witnesses, i.e., PWs. 1 and 2 who claimed to have seen the culprits and who also claimed to have identified the two appellants Ajay Kumar Rai and Pramod Rai, we are not sure that Shatrughan Prasad @ Shatrugha Prasad Shrivastav had indeed been present at the scene of occurrence in any connection. Mere finding of the driving licence could not be convincing us that it was the evidence of participation of that appellant in the commission of the offence. We have pointed out at the very outset of the judgment that the evidence of PW9 is such which could not lead us to any concrete conclusion. PW9 had stated in paragraphs 9, 10, 11 and onwards that it was Shatrughan Prasad @ Shatrugha Prasad Shrivastav who led it to different places for recovery of the victim or articles but, what was the places or what was the manner in which Shatrughan Prasad @ Shatrugha Prasad Shrivastav had led the police to different places, had not been stated by him. Not only that while deposing in court PW9, the investigating officer of the case was giving evidence which indicated as if recoveries were made prior to the statement which could not have been given by appellant Shatrughan Prasad @ Shatrugha Prasad Shrivastav. If



that was so then we again doubt the claim of PW9 that he was led by appellant Shatrughan Prasad @ Shatrugha Prasad Shrivastav to different places either for the recovery of the victim or for the recovery of the articles. The evidence which was available against appellant Shatrughan Prasad @ Shatrugha Prasad Shrivastav again appears as flimsy as not to sustain his conviction also.

11. In view of the discussion of the evidence made by us, we find that the learned trial judge ought to have acquitted the appellants giving them benefit of doubt. We, accordingly, allow the three appeals and acquitted the four appellants by giving to them the benefit of doubt. The judgment of conviction and order of sentence passed against each of them is hereby set aside. The two appellants, namely, Suresh Choudhary of Cr. Appeal (DB) No. 883 of 2009 and Shatrughan Prasad @ Shatrugha Prasad Shrivastav of Cr. Appeal (DB) No. 1015 of 2009, are in custody. Let them be released forthwith, if not wanted in any other case.

(Dharnidhar Jha, J.)

(Gopal Prasad, J.)

Sanjay/Kundan

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