

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.721 of 2010

Arising Out of P.S.Case No. -70 Year- 2003 Thana -Jakkanpur District- PATNA

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Santosh Kumar Tiwari @ Bada Babu, Son of Late Akhilanand Tiwari, Resident of
Shitalpur Kothi, Police Station-Dariyapur, District-Chapra (Saran).

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Shri Sunil Kumar Pathak, Advocate

For the State : Shri Ajay Mishra, A.P.P.

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CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA

and

HONOURABLE SHRI JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA)

Date: 07-07-2015

The solitary appellant Santosh Kumar Tiwary @ Bada Babu was convicted by the learned 3rd Additional Sessions Judge, Patna for committing offences under Sections 364A, 120B and 365 of the Indian Penal Code by judgment dated 17.09.2008 passed in Sessions Trial No.816 of 2005. It appears that he did not appear before the court below on the day of judgment and, as such, the order of sentence could not be passed against him. The appellant, lastly, appeared before the court below on 12.04.2010 when he was heard on sentence and was directed to suffer rigorous imprisonment for life as also to pay a fine of Rs. 50,000/- for committing offences punishable under Sections 364A/34 and 120B of the Indian Penal Code. As regards his



conviction under Section 365 Indian Penal Code, the learned trial Judge directed the appellant to undergo rigorous imprisonment for seven years. As regards the fine of an amount of Rs.50,000/-, the learned trial Judge directed that 75% of the amount should be given to the victim of the offence and 25% of the same may be used for defraying the cost for prosecuting the accused persons. The substantive sentence of imprisonment was directed to run concurrently. The appellant being aggrieved by and dissatisfied with the judgment of conviction and order of sentence, is before us through the present appeal to challenge the correctness of the finding of his guilt and the appropriateness of the sentence.

2. The case related to the abduction of Dr. Ramesh Chandra (P.W.12) a Neuro Surgeon of Patna who had his nursing home in Sahdeo Mahto Marg, Krishnapuri, Patna. He had come to his clinic in the evening on 17.05.2003 and after having finished his work in the clinic, had gone to the house of Dr. Ajay Kumar (P.W.10) for participating in some social function. He left the house of P.W.10 Dr. Ajay Kumar at about 11 P.M. by his Indica Car bearing registration no.BRIV-5445. He did not reach his house in the night and his servant and compounders being worried and wary of his disappearance contacted many persons including P.W.4 Nirmala Saxena who happened to be the full sister of the wife of the victim P.W.12 Dr. Ramesh Chandra.



3. As may appear from the evidence of P.W.4, who was the Director and Head of the Department of Gynecology in Nalanda Medical College and Hospital, Patna at that time that she came to the house of Dr. Ramesh Chandra and made enquires from his servant as also from the compounders. Before that, she had been informed that the vehicle of Dr. Chandra was lying near New Bus stand in the Bypass road and she rushed to that place to find that the two compounders of Dr. Chandra, namely, P.W.2 Naresh Singh and P.W.3 Harish Chandra Prasad were present there with some police officers. The abductors had given the clue about the location of the vehicle and had pointed out that the key of the vehicle was lying under its rear wheel. P.W.4 Nirmala Saxena stated in her written report Ext-3 that she found the rear seat of the vehicle disoriented and there was a match-box lying there, the sticks of which was scattered on the rear seat. It was assumed that Dr. Chandra had been kidnapped.

4. It may appear from the very written report as also from the evidence of the witnesses that the abductors had given a phone call into the clinic of Dr. Chandra to inform about the location of the vehicle and had asked them to bring the vehicle back and on making enquiry the caller had pointed out that he was speaking from Begusarai.

5. As may appear from the evidence of P.W.11 S.I. Neelam Kumari who was posted in Jakkanpur police station, the written



report was forwarded by the Superintendent of Police, Patna for institution of a case and investigation of the same by Jakkampur police station as the place of occurrence was located within its jurisdiction. She took up the investigation after drawing up the FIR and inspected the place of occurrence and examined the persons acquainted with the facts and circumstances of the case. During that course, she received an information from the Officer-in-Charge, Danapur police station, i.e., P.W.16 S.I. Ravi Prakash Singh that he had arrested one Anil Kumar Singh in connection with theft of vehicles and during questioning, he had stated that he was also involved in the kidnapping of Dr. Ramesh Chandra (P.W.12) and he divulged the names of other accomplices. P.W.11 S.I. Neelam Kumari obtained the confessional statement of the said Anil Kumar Singh recorded by P.W.16 Ravi Prakash Singh and proceeded to further investigate the case by finding out that Sunil Kumar Pandey, a Member of Legislative Assembly, one Babloo Kumar, Pappu Singh, Sanjeev Singh, Sanoj Kumar, Dipu, Sahil, Sunil Verma, Dhiraj Kumar Singh, Munna Singh, Chitranjan Kumar @ Babloo, this appellant Santosh Kumar Tiwari @ Bada Babu, Binay Kumar, Rajkumar, Ravindra Mukhiya and many others had participated in commission of the abduction of P.W.12 Dr. Ramesh Chandra. On suspicion, which arose out of the confessional statement of accused Anil Kumar Singh who was arrested by P.W.16 S.I. Ravi Prakash Singh as appears from the evidence of P.W.16 also,



a raiding party was formed by the Senior Superintendent of Police, Patna and then raids were conducted at different locations for arresting persons whose names had appeared in different confessions. It was one Ranvijay Singh who was arrested consequent upon the confession of one Binay Kumar who had been arrested consequent upon the confessional statement recorded by P.W.16 of arrested accused Anil Kumar Singh. The said Binay Kumar had pointed out that Dr. Chandra had been abducted by many persons including one Ranvijay Pratap Singh @ Babloo who was a resident of village-Gorkhari. Sanoj Kumar and Dhiraj Kumar Singh were also arrested accordingly. The three persons were also questioned by P.W.11 S.I. Neelam Kumari and the statement of Ranvijay Pratap Singh @ Babloo was recorded by her on 17.05.2003.

6. Ranvijay Pratap Singh @ Babloo pointed out to P.W.11 the place where P.W.12 Dr. Ramesh Chandra had been confined and according to him, it was the dilapidated and abandoned house of one Bhola Singh at village-Chirowra where the victim had been kept confined and accordingly, P.W.11 with P.W.14 and others raided that particular dilapidated house on 21.05.2003 at around 4 A.M. and on reaching there they found this appellant Santosh Kumar Tiwari @ Bada Babu along with Munna Singh and Chitranjan Kumar @ Babloo present there. The victim was found confined in a particular room in that dilapidated house, the three accused including this appellant was



arrested and on search, arms and ammunitions were recovered from their respective possession. A pistol along with two cartridges were recovered from the possession of this appellant and seizure memo Ext-10 was prepared for the recovery of the arms and ammunitions from the dilapidated house used for the purpose of confining the victim Dr. Ramesh Chandra. In respect of recovery of P.W.12 Dr. Ramesh Chandra, Ext-5/1 was prepared in presence of P.Ws.8 and 9. Dr. Ramesh Chandra along with the arrested accused was brought to the police station and his statement was recorded by the police and he was also produced before the Magistrate for recording his statement. From the site of recovery of Dr. Chandra a bed and other cloths were also recovered and for the recovery of those articles recovery memo Ext-4/3 was prepared. The statement of Dr. Chandra recorded by a Judicial Magistrate has been marked Ext-8.

7. P.W.12 Dr. Ramesh Chandra during his evidence in Court has stated that as soon as he left the house of P.W.10 Dr. Ajay Kumar after participating in the function and had reached near the Panchmandir in the Serpentine Road, Patna a vehicle came parallel to that of his and some persons ejected from that vehicle and sharply moved towards his vehicle and after opening the doors of his vehicle snatched the starting keys of the vehicle and by force attempted to take him away. He resisted it, upon which the accused persons entered into his vehicle and started driving the vehicle themselves to take him



to some unknown place after having blind folded him. He was told by the accused persons that they were returning after committing a murder and they had captured the car of the doctor so as to evading the police attention. But subsequently, during that course, they were talking to some persons by cellular phone and were receiving certain instructions also and after some times they pointed out to the doctor that he had been kidnapped and that he was required to pay an amount of Rs.50,00,000/- (fifty lakh) to them for being released. The doctor stated that he did not have that big an amount with him. He was taken to a *Khaprail* house which had a courtyard in its centre surrounded by verandahs all around it, when the fold from his eyes were removed and he was asked certain telephone numbers. The doctor pointed out the telephone numbers of his residence and clinic and stated that his wife was not in India rather she was away along with his children and he did not exactly remember the telephone numbers of his children and the relatives. The doctor was moved from one house to the other and thus, he was confined in three different houses before he was moved into the dilapidated house of one Bholu Singh from where he was recovered. P.W.12 Dr. Chandra had pointed out that in the night on 21.05.2003 there was a commotion and some one was shouting 'Pakro-Pakro' and then he could learn that the police officers had come and removed the piece of cloth from both of his eyes and introduced themselves as Dy.S.P's of Sachiwalaya and other

jurisdictions and they took him to the police station from the site of his confinement. The police had arrested three accused persons including this appellant Santosh Kumar Tiwari @ Bada Babu from the very house where PW12 was confined as per his evidence.

8. The fact that this appellant Santosh Kumar was arrested from the site of confinement of PW12 is established by the evidence of Dr. Ramesh Chandra which gets supported from the evidence of P.W.11 S.I. Neelam Kumari and P.W.14 Dillu Lohar as also Md. Mukim (P.W.15) who were the members of the raiding party formed to recover Dr. Ramesh Chandra. Dr. Chandra during his deposition in the Court had been asked to identify the accused persons. Incidentally, the three accused persons who were present on that day in the dock could not be identified by him as persons who he did know either as his abductors or confiners. The three persons, namely, Lulan Sharma, Saroj Singh and Binay Kumar were present in the dock, the PW12 was examined in Court. Other seven accused persons who were also put on trial besides the three who were present in dock the day PW12 was examined including this appellant, were absent from Court and they had been allowed to be represented by their counsel under Section 317 Cr.P.C. The doctor (victim) had claimed that had those seven accused persons been present in Court on that day, that's, on 16.06.2007, he could have identified those accused who had been arrested from the site of his confinement on 21.05.2004. While cross-



examining the victim P.W.12 Dr. Chandra, this appellant does not appear putting any question to the witness on his claim for identifying the appellant or on his evidence that this appellant along with two others had been arrested by the police in the wee hours of the day P.W.12 had been recovered from the dilapidated house of Bhola Singh. He had not filed as appears from the record, any petition ever during trial to challenge the evidence of P.W.12 that he had been arrested. This appears one of the strongest reasons as to why we should hold that the evidence of P.W.12 and that of P.Ws. 11,14 and 15 that they had arrested this appellant along with two others from the site from where P.W.12 had been recovered is acceptable real evidence. A few questions were put to P.W.12 as regards his participation in any Test Identification Parade. The witness had stated that he was never called to such parade by the police for identifying the accused. We are of the view that there was no purpose in organizing the Test Identification Parade because the police had very well arrested the appellant and two others from the site of the occurrence and it would have been an exercise in futility if they had called P.W.12 to attend any parade in which this appellant Santosh Kumar Tiwari @ Bada Babu or any of the two other accused who had been arrested on 21.05.2003 could have been put for identification. The present appellant along with two others were already known by their faces to P.W.12 and it would have been of no consequence that

such a parade would have been organized.

The other circumstance which appears conclusively establishing the identity of the appellant as one of the accused who had been arrested from the site from where P.W.12 Dr. Chandra was recovered, was to evade the court proceedings on 13.07.2007 when the witness P.W.12 had gone to identify the accused persons as appears from paragraph-9 of P.W.12. The appellant had purposely not attended the Court proceedings and he was represented by his counsel only with a view to evading being identified by the victim as one of three persons who had been arrested from the site of his confinement. This is one of the circumstances which very well satisfies us about the arrest of the appellant.

P.W.12 has stated that three persons arrested from the dilapidated house of Bhola Singh were persons who were keeping guard upon him. We have already referred to the evidence of P.W.12 in paragraph-4 that his kidnappers had asked him to pay up Rs.50,00000/- as ransom and he had pointed out that he did not have that big an amount in his possession. His confinement was purposeful as regards the intention of the accused persons to extort ransom from him. This was the reason that he was moved from one house to the other so that his confinement could be yielding the desired amount to them as ransom. In an offence of kidnapping or abduction for the purpose of extorting ransom, there is always compartmentalization of



duties. Some of them pick up the victim the other group of the gang moves with the victim after the picking has been done by one group of the kidnapper. There could be yet another group of persons engaged in keeping guard upon the victim from time to time and yet another group of the gang could be engaged in continuing the supply line of meals, etc. as regards the victim and their own men who were putting guard upon the victim. There is always a hidden group of the members of the gang which operates from outside the place where the victim is confined and they generally watch the movement of the police who could be restless to recover the victim of such an offence. If we could consider the definition of the offence of abduction for the purpose of extorting money as contained in Section 364A of the Indian Penal Code, we could find that any of these persons who are put on different duties or are performing different kinds of duties, like, picking up the victim, moving him from one place to other or keeping guard upon him and parleying with his family members for extorting ransom amount or gathering information about the police movement or bringing food for the victim and his guards, they all are part of the same group whose central moto is to extract money after the act of abduction had been committed. Everyone knows that the man had been kidnapped or abducted and with that knowledge every one of the group performs the various duties as noted above, which really forms the complete offence of wrongful confinement or detaining the person

who had been abducted with the solitary purpose that extortion money has to be paid by the family members of the victim. The present appellant being put on guard was fully aware that Dr. Chandra P.W.12 had been kidnapped by his gang members and had wrongfully confined and detained him only with a view to extort the whole or part of Rs.50,00,000/- .

9. The witnesses, like, P.W.2 Naresh Singh, P.W.3 Harish Chandra Prasad, P.W.4 Nirmala Saxena, the informant of the case, P.W.5 Mahesh Chandra Verma, the elder brother of the victim Dr. Ramesh Chandra, they all stated that Dr. Chandra had been kidnapped in the night on 17.05.2003 when he had not returned his house after he had gone to attend a social function in the house of P.W.10 Dr. Ajay Kumar. This story has not been denied by any of the accused put on trial, only his individual implication has been challenged by the defence.

10. Shri Sunil Kumar Pathak, learned counsel appearing on behalf of the appellant was critical of the evidence of recovery by citing to us the evidence of two hostile witnesses P.W.8 Sasi Bhusan Sharma and P.W.9 Nityanand Kanungo. It was contended by the learned counsel that the evidence of the two witnesses did not support the factum of recovery of P.W.12 Dr. Chandra and, as such, the evidence of police witnesses, i.e., P.Ws.11, 14 and 15 must be rejected and the appellant be acquitted.



11. We have very carefully considered the submissions and we very consciously went through the evidence of P.Ws.8 and 9. It is true that they were declared hostile by the prosecution and they were permitted to be cross-examined by the prosecutor who was conducting the trial, but on a careful scrutiny of the evidence of P.W.8, what we could find was that the prosecutor was more cunning than the defence when he was bringing the evidence of recovery of certain articles along with the victim through cross-examination of P.W.8 in paragraph-3 and thus was blasting off the attempt of the defence to nullify the recovery of anything or Dr. Chandra. P.W.8 had been put a very direct question as to what were recovered from there and after being shown the recovery memo was asked as to whether the document had been prepared for those recoveries and he had put his signature along with P.Ws.9 and 8 readily answered in affirmative the question of the prosecutor. He, of course, had been declared hostile but only because he had refused to answer that he had given any statement to the police. We do not deny that he had not given any statement to the police as a person who was associated with the search and seizure if had not made a statement to the police in investigation, does not appear of any consequence, because the facts which were recorded in the document, like, that there was a search on a particular place, that there were recoveries of certain articles or that Dr. Chandra was found and recovered from the particular place were all statements



of the witnesses who had signed the document as witnesses. A document is a document containing statements of facts. The definition of the word document itself makes it very clear that anything written or scribed over any particular thing or article so as to expressing a fact in issue, is a document. Thus, the various entries which are made in a record, like a search-cum-recovery memo or recovery memo are all statements of witnesses as they are equally the statements of the officers who had prepared it by incorporating the details of search and recovery. As such, there is no need of a witness being questioned by the police who has been associated under Section 100 of the Cr.P.C. with the search and seizure of any article or person. Even if the two witnesses had not been examined, we could not have recorded any adverse finding because Section 100 (5) Cr.P.C. itself is sufficient to point out that a witness who has been associated with the seizure of any property or article is not required to be examined by the Court unless it desires him to be examined and issues a summons in that behalf. The evidence of P.W.9 Nityanand Kanungo also does not leave us in any doubt that he had also witnessed the recovery not only of Dr. Ramesh Chandra but of the articles, like, bed and clothes also which had been found there in the dilapidated house of the certain Bholu Singh. P.W.11 Neelam Kumari, P.W.14 S.I. Dillu Lohar or P.W.15 Inspector Md. Mukim did not have any axe to grind against this appellant. They were police officers who had been roped in by the



Senior Superintendent of Police along with a couple of Deputy Superintendents of Police to conduct raids at different locations. They were acting in utter performance of their official duties and the only purpose of their actions was to unearth the realities behind the abduction of Dr. Chandra. They were performing public functions enjoined upon them and entries made in performance of their official duties are non-challengeable as there is a presumption of regularity under Section 114 of the Evidence Act. They could never be treated as partial. We, as such, do not have any hesitation in overruling the submission of Shri Pathak appearing on behalf of the appellant that the evidence of the police officers must not be considered.

After having considered the evidence of the witnesses and especially the evidence on recovery of Dr. Chandra and arrest of this appellant along with two others from the site of confinement of Dr. Chandra, we are more than satisfied that the learned trial Judge had rightly convicted the appellant and had appropriately sentenced him to the terms of imprisonment and fine. However, we find some flaw in the direction of the learned Judge as regards the division of the amount of fine whereby Dr. Chandra had been directed to receive 75% of the fine amount. We are very well acquainted from the facts of the present case that he is quite an affluent person and probably has his name in the field of Neuro Surgery in Patna. His son is residing in the United States and P.W.6 Rekha Chandra wife of Dr.



Chandra and his sons had rushed from United States after having received the news of abduction of Dr. Ramesh Chandra. Their affluence does not justify the direction of the trial Court that Dr. Chandra should get 75% of fine amount. Likewise the State has a constitutional obligation upon it to prosecute offences, like, that of the present nature. It is true that Section 357 Cr.P.C. does permit to divide the amount of compensation awarded as fine to meet out some part of the expenses which could have been incurred by the State in prosecuting the case, but that does not appear to be appropriate to us because a few thousand rupees may not be sufficient to be divided as the expenses and a few thousand rupees if does not go into the exchequer, it does not make much difference to the State of Bihar. We are of the opinion that the amount of Rs.50,000/- must be realized as fine from the appellant and it should be spent on the litigation under the scheme of Legal Services Authority Act by paying up the money to the Bihar State Legal Services Authority for augmenting its finance so as to meeting any exigency on the welfare of victim of offences especially in meeting out the expenses of litigation which could be taken up by the State Legal Services Authority through any District Authority or High Court Legal Services Committee to the finance the defence of someone from the poorest of the social strata or a destitute lady or child. In case, the amount is not paid, then we may direct the appellant to undergo rigorous imprisonment for a further

period of three years.

12. With the above modification as regards order of in respect of fine, we dismiss the appeal in its entirety.

(Dharnidhar Jha, J.)

(Ahsanuddin Amanullah, J.)



Brajesh Kr./P.Kumar/NAFR

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