

IN THE HIGH COURT OF JUDICATURE AT PATNA

(Against the judgment of conviction dated 01.06.2007 and order of sentence, dated 02.06.2007, passed by Shri Ashok Kumar Roy, Additional Sessions Judge, F.T.C.-I, Motihari in Sessions Trial No. 848/73 of 2005/05, arising out of Turkauliya (Banjariya) P.S. case No. 227 of 2003, G.R. No. 1975 of 2003)

Criminal Appeal (DB) No.864 of 2007

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Badrudoza @ Md.Masoom @ Masum, Son of Md. Ekbal Hussain, resident of Village- Siswan, P.S. Banjaria, District- East Champaran.

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant/s : Mr. Sanjay Kumar-7

Mr. Mukund Kumar

For the Respondent/s : Mr. Abhimanyu Sharma, Addl. P.P.

: Mr. Narendra Prasad Singh, *Amicus Curiae*

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

and

HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH)

Date: 18-03-2015

The appeal has been filed against the judgment of conviction dated 01.06.2007 and order of sentence, dated 02.06.2007, under Section 364 A of the Indian Penal Code, passed, by the learned Additional Sessions Judge, F.T.C.-I, Motihari in Sessions Trial No. 848/73 of 2005/05, arising out of Turkauliya (Banjariya) P.S. case No. 227 of 2003, G.R. No. 1975 of 2003, against the sole accused-appellant and sentenced him to suffer imprisonment for life and fine of Rs.1,000/- under Section 364A of the Indian Penal Code and in default of payment of the same to

under go further two months Simple Imprisonment.

2. The prosecution's case, as disclosed in the written report of Rajeshwar Prasad (P.W. 3), Mukhiya of Gram Panchayat Raj, Rohiniya, P.S. Banjaria, presently residing in Ambika Nagar, P.S. Banjaria, District- East Champaran, made on 27.08.2003 at 4.00 P.M. addressed to officer-in-charge Banjaria police station, in short, is as follows:

(i) The informant, namely, Rajeswhar Prasad, lived together in Abika Nagar along with his family, his younger brother, Awadh Patel and sons of his four brothers. On 24.08.2003, he along with his younger brother Awadh Patel had gone to his village for distribution of flood relief. His wife and two nephews, namely, Mritunjay Kumar and Mukesh Kumar remained at at Ambika Nagar. On 25.08.2003, at 11.00 A.M. his nephew Mukesh Kumar, aged about 14 years, who studied in Class-VII in Popular Academy, Chandmari, Motihari left his house stating that he is going to Janpool Chowk from where he would return soon and would take his sister Renu Kumari to her examination centre. When his nephew Mukesh Kumar did not return even in the night, they thought that he has gone to witness Mahaviri Jhanda ceremony. At about 5.30 P.M., on 26.08.2003, he received a call on his telephone bearing number 226062, asking for his brother Bir Bahadur. The caller informed that Mukesh Kumar, son of Bihr Bahadur is in captivity and as such it is



necessary that Bir Bahadur talked to them. As his family members were narrating the incidents to the informant which took place in his absence, another phone call came around 7.05 P.M., again enquiring for Bir Bahadur. When informant's daughter replied that Bir Bahadur has not yet come, then the caller said that if she and others do not believe that Mukesh Kumar is in captivity, they can talk to him. Mukesh Kumar was brought on line, who stated that he has been kidnapped. Thereafter the line was disconnected. The accused persons had made as many as eight calls on their telephone number. The informant claims that the accused persons have kidnapped his nephew for ransom.

3. The written report of Rajeshwar Prasad was forwarded by Banjaria police station, East Champaran to Officer-in-charge Turkaulia police station for institution of the a case, which was registered as Turkaulia Police Station Case no. 227 of 2003 dated 27.08.2003, under Section 364 A of the Indian Penal Code.

4. The police, upon completion of investigation, submitted *charge sheet* under Section 364A of the Indian Penal Code and cognizance of the offence was taken accordingly. After commitment of the case, when charges were framed, under Section 364A of the Indian Penal Code, against the accused-appellant, he pleaded not guilty and claimed to be tried.

5. Prosecution examined altogether 6 (Six) witnesses in

support of its case, who are as follows: P.W. 1 Mukesh Kumar is the kidnapped boy, P.W. 2 Awadh Patel is the brother of the informant and uncle of the kidnapped boy, Mukesh Kumar, P.W. 3 Rajeshwar Prasad is the informant and uncle of the kidnapped boy, P.W. 4 Nandu Yadav is a co-villager and is a chance witness, P.W. 5 Bihari Prasad Jaiswal is resident of neighbouring village and has turned hostile. P.W. 6 Suresh Prasad is the investigating officer of the case.

6. The defence of the appellant in the statement under Section 313 of the Cr.P.C. is the total denial of the occurrence.

7. The trial Court on considerations of materials on record, convicted the sole appellant under Section 364A of the Indian Penal Code and sentenced him to life imprisonment, as stated in the earlier paragraphs.

8. Being aggrieved, the sole appellant has filed the instant appeal. Before we consider the defence of the appellant, it would be necessary to notice the evidence of prosecution in brief.

9. The prosecution in order to substantiate its case examined six witnesses, as already noticed. One of the witness P.W. 5 Bihari Prasad Jaiswal has turned hostile.

10. We will now examine one by one, the remaining five witnesses. P.W. 1 Mukesh Kumar is the victim boy himself. He stated that his father is five brothers. One of the brothers, namely, Motilal Prasad lives separately and the rest four brothers, namely, Rajeshwar



Prasad, Laxmi Prasad, Awadh Patel and his father Bir Bahadur Prasad reside jointly. The children are pursuing their study while residing at Ambika Nagar. This witness also refers to Awadh Patel as his 'Papa' also. The house of the accused Masoom is very close to the house of victim situated at Ambikanagar. He states that on 25.08.2003 at about 9.30 A.M. one Masoom rang up and called him for seeing a movie to which Mukesh Kumar expressed his unwillingness for the reasons that he has to accompany with his sister to M.S. College for examination. Then Masoom modified the Programme and stated that he can return after having round of some place. P.W.1 relented and proceeded for Jharpool. At Jaanpool, he met Sandeep, who was there from before, with whom some talk took place regarding movie. In the meantime, Masoom, Sarfaraj and Sanjay also arrived. They stated that again P.W. 1 can return after taking a round of Devi Chowk. This witness expressed his disinterestedness. However, on the point of pistol, they forced him to move with them. They got him on a Rickshaw and took him to a lonely place beyond Devi Chowk where they forced him to sit to in a Jeep, which was in waiting. They got him down at Kataha Vilalge where Masoom, Sarfaraj and Sanjay took him to the place of his 'Mausi'. The name of his 'Mausa' was Matiullah. They locked him in a room and tied him to a chain. Sarfaraj also slapped him once. On 26.08.2003, Masoom made a phone call to his house and demanded Rs.8,00,000/- (eight lakh) as ransom. On 28.08.2003, calls

were repeatedly made on his house number. Some time in the day on 30.08.2003, Masoom left the premises and in the night, the police alongwith Awadh Patel came and arrested Sarfaraj, Matiullah and Sanjay and police took him to the police station and recorded his statement.

11. P.W. 2 Awadh Patel is the brother of the informant. He too has supported the prosecution case. On the advice of the police, he along with the informant had gone to his village for distribution of flood reliefs. On receiving the news of kidnapping of his nephew Mukesh Kumar, they came back to Ambika Nagar. On the advice of the police, I.D. call was attached to his phone and the number of phone by which ransom was demanded was identified as Mobile no. 9835414247, The matter was reported to the police. The police found that the Mobile belonged to one Dipendra Kumar, who soon thereafter was arrested. On the statement of Dipendra, Sandeep was arrested. P.W. 2 stated that he accompanied the police, which conducted raid in village Kataha in the house of Matiullah, from where his nephew Mukesh Kumar was recovered.

12. P.W. 3 Rajeshwar Prasad is the informant of the case and he has proved his written report, which has been marked as Annexure-1. He has fully supported the prosecution case and demand of dowry of Rs.8 lakh.

13. P.W. 4 Nandu Yadav is a labour and a tractor driver of

the victim. He is a chance witness. He stated that at about 10.00 – 11.00 A.M. he had seen the victim on a Rickshaw along with four others, who were proceeded to Lakhaura in two Rickshaw. After two days, he learnt that ransom was demanded and the police finally recovered the victim.

14. The prosecution also examined Suresh Prasad, the Investigating Officer of the case, as P.W. 6, in order to establish that the victim Mukesh Kumar (P.W. 1) was recovered from the house of Matiullah, 'Mausa' of Masoom. On the basis of I.D. call record, arrested Dipendra Kumar from whose Mobile the calls were made. The said Dipendra Kumar divulged that his mobile was taken by the appellant on the relevant day. He arrested Sandeep, Sarfaraj, Matiullah, and Masoom in course of investigation.

15. On the strength of these evidence, learned counsel for the prosecution submits that there are sufficient materials to bring home the charge under Section 364A of the Indian Penal Code.

16. Mr. Narendra Prasad Singh, who has been appointed as Amicus Curiae in this case, submits that the prosecution case is doubtful and the evidence produced by the prosecution is not sufficient to sustain the conviction under Section 364A of the Indian Penal Code. He submits that the statements of witnesses are contradictory and some of the statements in fact made by the witnesses have not been supported by the investigating officer. He



submits that the call details of the phone has not been brought on record as Ext. He submits that P.W. 2 is not truthful witness, as he stated that he was member of the raiding party from which the boy was recovered from the house of Matiullah, a close relative of accused Masoom. He submits that the falsity of such statement of P.W. 2 becomes noticeable as the investigating officer stated in para. 20 of his evidence that none of the family members of the informant accompanied him while raid was being conducted. He submits that even P.W. 4 cannot be held reliable, because though he saw the victim in the company of four accused persons at about 11.00 A.M. on 25.08.2003, still he did not care to inform the inmates, though he was the tractor driver. He submits that the conduct of such witness is unnatural and should be discarded. Similarly, there are discrepancies in the statements of P.W.1, as he too stated that P.W. 2 was the member of the raiding party, which raided the house and recovered the victim. He submits that P.W. 3 is not an eye witness of the occurrence.

17. It is true that the investigating officer in his evidence stated that none of the family members accompanied him while he was conducting raid in the house of Matiullah from where the victim boy was recovered. The statement of P.W. 2 to the contrary that he was a member of the raiding party does not appear to be truthful consequently we do find his evidence reliable.

18. So far as evidence of P.W. 4 is concerned, we find that he drives tractor of the one of the uncles of the victim (Mukesh Kumar). He saw Mukesh Kumar in the company of 4-5 boys moving on two rickshaws, still he did not inform the family members, though a search for Mukesh had begun on the following day i.e. 26.08.2003. The conduct of P.W.4 is most unnatural and does not make him reliable and as such we exclude his evidence while considering the prosecution case.

19. On the other hand, we find that the evidence of the investigating officer leaves no doubt that Mukesh Kumar was recovered from house of Matiullah, tied to a chain, a close relative of Maoosm. The raid conducted by the investigating officer establishes that Mukesh Kumar was kept in captivity, which fully establishes place of occurrence. P.W. 1 and P.W.3 have stated that ransom was made on his local phone number from the Mobile no. 9835414247, which belongs to one Dipendra and was used by Masoom. The evidence of P.W. 1 and P.W. 3 have remained substantially unshaken. Besides, this P.W. 1 stated that Masoom made a call to him in the morning of 25.08.2003 and asked him to see a movie. When he expressed his unwillingness, as he had to accompany his sister to the examination center, the accused insisted that to have a round of some place with them and thereafter can return shortly. Masoom called him at Janpool chowk and with the help of others, kidnapped him for

ransom. The evidence of P.W.1, P.W.3 and P.W. 6 clearly establishes the guilt of the appellant under Section 364A of the Indian Penal Code.

20. In the result, this appeal fails and is accordingly dismissed.

21. It appears from the record that the appellant is in custody. He would remain in custody to serve rest of the period of sentence.

22. Mr. Narendra Prasad Singh, who has been appointed as Amicus Curiae would be paid his prescribed fees.

(Samarendra Pratap Singh, J.)

Uday/-

(Kishore Kumar Mandal, J.)

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