

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.148 of 2013

Arising Out of PS.Case No. -60 Year- 2008 Thana -GOPALPUR District- -

1. Haleem Dewan S/O Meer Hasan Dewan, resident of Village Ahirauli Dubauli
Tola Takia P.S. Gopalpur District Gopalganj

.... Appellant/s

Versus

1. The State Of Bihar

.... Respondent/s

With

Criminal Appeal (DB) No. 181 of 2013

Arising Out of PS.Case No. -60 Year- 2008 Thana -GOPALPUR District- -

1. Nausad Devan S/O Late Khairati Devan, resident of village - Ahirauli, Dubauli
Tola Takitya, P.S. Gopalpur, District - Gopalganj

.... Appellant/s

Versus

1. The State Of Bihar

.... Respondent/s

With

Criminal Appeal (DB) No. 188 of 2013

Arising Out of PS.Case No. -60 Year- 2008 Thana -GOPALPUR District- -

1. Rojid Ansari S/O Late Tdrish Ansari , R/O Village-Gorahiya Mohan, P.S.-Taria
Sujan Distt.-Kushi Nagar, U.P.
2. Ramayan Pandit @ Hawaldar Pandit S/O Late Algu Pandit, R/O Village-Jawahi
Mathehulac, P.S.-Tareya Sujan Distt.-Kushi Nagar, U.P.

.... Appellant/s

Versus

1. The State Of Bihar

.... Respondent/s

Appearance :

(In CR. APP (DB) No. 148 of 2013)

For the Appellant/s : Mr. Binod Keshari Singh, Sr.Advocate
Mr. Raghu Prasad, Advocate

For the Respondent/s : Mr. Ajay Mishra, APP

(In CR. APP (DB) No. 181 of 2013)

For the Appellant/s : Mr. Bijay Prakash Singh, Advocate

For the Respondent/s : Mr. S.C. Mishra, APP

(In CR. APP (DB) No. 188 of 2013)

For the Appellant/s : Mr. Md. Sufiyan, Advocate

Mr. Thakur Brajesh Singh, Advocate

For the Respondent/s : Mr. S.N. Prasad, APP

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CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA PRAKASH)

Date: 01-04-2016

Appellant Haleem Dewan of Criminal Appeal (DB)

No.148 of 2013, Appellant Nausad Devan of Criminal Appeal (DB)

No.181 of 2013 and Appellants Rojid Ansari and Ramayan Pandit @

Hawaldar Pandit of Criminal Appeal (DB) No.188 of 2013 have been

convicted under Section 364A I.P.C. and sentenced to R.I. for life and

fine of Rs.2500/- each, in default of which rigorous imprisonment for

another six months by judgment dated 8/10.1.2013 passed by the Ad

hoc Additional Sessions Judge II, Gopalganj in Sessions Trial No.240

of 2009/ 39 of 2012.

2. The case of the Informant Namajuddin (P.W.3) is that on the fateful day four persons with covered faces took away his brother, upon this information a case against unknown was instituted on 6.9.2008. Subsequently during investigation certain circumstances were found against the present Appellants, on account of which they were charge sheeted and they were put on trial.

3. During trial the prosecution examined six witnesses.

P.W.1 Jainuddin Mian is the victim himself. P.W.2 Mustaqueem Mian is his father. P.W.3 Namajuddin is the Informant and brother of the victim. P.W.4 Raghunath Prasad is one of the Police Officers on the point of arrest of the accused and recovery of the victim. P.W.5 Raj Kishore Singh is also a Police Officer, who was part of the team of P.W.4. P.W.6 Sudama Rai is the Investigating Officer.

4. The defence also examined ten witnesses, namely, Majistar Prasad (D.W.1), Virendra Ram (D.W.2), Naresh Ram (D.W.3), Heela Lal (D.W.4), Janak Manjhi (D.W.5), Dwarika Kushwaha (D.W.6), Ramadhar Yadav (D.W.7), Murli Tiwari (D.W.8), Bahruddin Dewan (D.W.9) and Nurain Sah (D.W.10) on the point of alibi of Appellants Haleem Dewan, Naushad Dewan and Hawaldar Pandit @ Ramayan Pandit but since none of them were examined before the police, such alibi has to be rejected.

5. The short point, which has been raised by the Appellants, is that in the present case the ingredients of Section 364A I.P.C. is not satisfactorily proved. In order to appreciate this submission one would have to look to the provisions of Section 364A I.P.C., which is reproduced below :

“364A. Kidnapping for ransom, etc. –
Whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction and threatens to cause

death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt, or causes hurt or death to such person in order to compel the Government or [any foreign State or international inter-governmental organization or any other person] to do or abstain from doing any act or to pay a ransom, shall be punishable with death, or imprisonment for life, and shall also be liable to fine.”

We find from the ingredients necessary for proving such offence, they must be; (i) abduction or detention, (ii) threat to cause death or hurt, (iii) demand of ransom.

6. When the first ingredient is concerned, we find that the victim Jainuddin Mian (P.W.1) has stated that on the date of occurrence he had been kidnapped by four persons forcibly and blind folded. However, he learnt their names in the conversation that they were carrying between themselves as Rojid Ansari and Hawaldar Pandit as also non-appellants Prabhu and Dharmendra. He also learnt the names of Nehal, Bhairav and Asharfi, who are not before this Court. He stated that when he walked at a certain distance Appellants Naushad Dewan and Haleem Dewan met the rest of the kidnappers on the way after which they proceeded. He further stated that Appellant

Rojid Ansari had compelled him to make a phone call to his brother and asked for ransom of Rs.5 lacs. Subsequently Appellants Rojid Ansari, Haleem Dewan and Hawaldar Pandit were apprehended from the place where the victim himself had been recovered. He stated that he knew Appellant Haleem Dewan and Naushad Dewan from before since they used to live nearby.

From the evidence of the present witness, it is clear that he had been abducted by the Appellants Rojid Ansari and Hawaldar Pandit and Appellants Haleem Dewan and Naushad Dewan were also apprehended from the place where he had been detained.

7. P.W.2 Mustaqueem Mian, who is the father of the victim, supported the factum of abduction of P.W.1. He also stated that he learnt that Appellants Rojid Ansari, Haleem Dewan and Hawaldar Pandit had been arrested from the place where the victim had been detained as also that the victim had disclosed the names of Naushad Dewan and Nihal before him as one of the kidnappers.

8. P.W.3 Namajuddin, who is the brother of the victim and the Informant, supported the factum that on 6.9.2008 while he along with the victim was returning on a motorcycle, four unknown persons with covered faces had kidnapped his brother, upon which he had instituted the fard beyan, which is Exhibit 2 and the signature of a witness as Exhibit 2/1. He further stated that on 8.9.2008 a phone call

had been received by him demanding ransom of Rs.5 lacs. On 10.9.2008 his brother was allegedly recovered from where the police had also apprehended Appellants Rojid, Hawaldar and Haleem. He stated in cross examination that he had not talked to Appellants Haleem and Naushad on phone and that victim Jainuddin used to have a joint business with his father, who was the head of the family.

9. From the aforesaid material witnesses, there is no denying that the prosecution has sufficiently proved the factum of abduction of P.W.1. However, the fact that demands of ransom had been made by the accused persons is not satisfactorily proved in the sense that P.W.2 Mustaqueem Mian, who was the head of the family and the father of the victim, does not mention anything about such demand. We also find from the evidence of P.W.6 Sudama Rai that there is no supporting documentary proof that any phone calls had been made in this regard. In such circumstances, evidently the fact of demand of ransom has not been proved, which is an essential ingredient of Section 364A I.P.C.

10. As for the evidence of rest three police official witnesses i.e. P.W.4 Raghunath Prasad, P.W.5 Raj Kishore Singh and P.W.6 Sudama Rai that undoubtedly three of the Appellants were recovered from the place where the victim had been confined, namely, Rojid Ansari, Hawaldar Pandit and Haleem Dewan. It appears that on

the discovery statement of Appellant Rojid Ansari the victim was recovered from among the fields from where Appellant Ramayan Pandit @ Hawaldar Pandit and Haleem Dewan were arrested. The case is thus well proved that they had confined P.W.1. The victim himself disclosed that he had learnt that Appellant Naushad Dewan had also talked to the kidnappers, meaning thereby that he was also involved in the present occurrence.

11. In view of such, even though the Appellants cannot be convicted under Section 364A I.P.C., we are of the opinion that they are liable for punishment under Section 363 I.P.C.

12. In such circumstances, the appeals are dismissed but modification in conviction under Section 363 I.P.C. and they are sentenced to undergo R.I. for seven years.

(Anjana Prakash, J)

(Rajendra Kumar Mishra, J)

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