

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.460 of 2010

With

Criminal Appeal (DB) No. 531 of 2010

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Against judgment of conviction and order of sentence dated 08.04.2010, passed by the Additional Sessions Judge-cum-FTC-2, Lakhisarai in Sessions Case No. 142 of 2008, GR.No.379 of 2006, arising out of Lakhisarai Police station Case No. 171 of 2006.

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1. Lallu Yadav S/O Late Sobhan Yadav R/O Vill. Jalgodha, P.S. Gidhaur, Distt. Jamui
2. Chhattar Yadav S/O Late Sobhan Yadav R/O Vill. Jalgodha, P.S. Gidhaur, Distt. Jamui

Appellants in Criminal Appeal (DB) No.460 of 2010

With

Manoj Yadav S/O Nageshwar Yadav R/O Vill.- Alkhpura, P.S.-Gidhaur, Dist.- Jamui

.... Appellant Criminal Appeal (DB) No. 531 of 2010

Versus

The State Of Bihar

.... Respondent in both appeals

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Appearance : in both appeals

For the appellants : Mr. Ajay Kumar Thakur, Advocate

Mr. Prakash Mahto, Advocate

Mr. Naresh Dixit, Advocate

For the State : Mr. Ashwini Kumar Sinha, APP

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

and

HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH)

Date: 18-10-2016

Both these appeals arise out of common judgment of conviction and order of sentence dated 08.04.2010, passed by the Additional Sessions Judge-cum-FTC-2, Lakhisarai in Sessions Case No. 142 of 2008, GR.No.379 of 2006, arising out of Lakhisarai Police station Case No. 171 of 2006.

2. The prosecution case, in short, as made out in the written

report of Reshmi Devi (PW 9) made on 05.05.2006 to the Officer-in-charge of Lakhisarai police station, in short, is as follows:-

3. The informant Reshmi Devi (PW 9) stated that on 04.05.2006 at about 10 AM, her son Nitish Kumar @ Sighna Yadav S/o Vinod Yadav was missing from the nearby *Dalan*. She stated that her son was lured by a man, while he was playing near the *Dalan*. She doubted the hand of uncle Dwarika Yadav, his wife, Jitendra Mandal, Ranjeet Mandal, Umesh Paswan and Girish Mandal in the abduction of her son. On basis of written report, Lakhisarai Police station case no. 171 of 2006, dated 05.05.2006 was drawn under section 364 of the IPC. Police after investigation submitted charge sheet under section 364A of the Indian Penal Code against accused Manoj Yadav, Kapildeo Yadav, Lallu Yadav and Chattar Yadav. Learned Chief Judicial Magistrate, Lakhisarai after taking cognizance of the offence under section 364A of the IPC committed the case to the court of sessions. On 4.2.2008 charge was framed under section 364A of the IPC against all the accused persons to which they pleaded not guilty and claimed to be tried.

4. The prosecution in support of its case altogether examined nine witnesses, namely, PW 1 Shrawan Mandal; PW 2 Ranjan Paswan; PW 3 Bangali Paswan; PW 4 Pappu Sao; PW 5

Ajnawi; PW 6 Ramakant Yadav; PW 7 Nawal Mandal. PW 8 Mahfuz Khan is the investigating officer, and PW 9 Reshmi Devi, is the informant of the case. Apart from the oral evidence, the prosecution has also produced documents in support of his case, for instance, the written report (*exhibit 1*), the FIR & formal FIR (*exhibit 2*), confessional statement of Manoj Yadav (*exhibit 3*) etc.

5. Defence also examined one Tarni Prasad Yadav, who proved the invitation card of marriage, which has been marked as exhibit A. Prosecution under section 313 of the Cr.P.C. examined as many as four witnesses.

6. On consideration of materials on record, the trial court acquitted Kapildeo Yadav, whereas convicted all the three appellants Manoj Yadav, Lalu Yadav and Chattar Yadav under section 364 of the IPC and sentenced them as already indicated in the earlier paragraphs.

7. Being aggrieved, the convicted appellants, namely, Manoj Yadav, Lalu Yadav and Chattar Yadav have filed their respective appeals. Out of nine witnesses examined by the prosecution, PW 6 is tendered, while PWs. 1, 2, 3, 4, 5 and 7 have been declared hostile. As such, the case of the prosecution is based on the evidence of the informant (PW 9) and the Investigating Officer Mr. Mahfuz Khan (PW 8).

8. PW 9, the informant, in her evidence before the court has supported the prosecution case. She stated that on 4.5.2006, her five years old child was playing near *Dalan*, from where he went missing. She suspected the hand of her uncle Dwarka Yadav and his wife. She stated in her evidence that after kidnapping of her son, accused Kapil Yadav and Manoj Yadav had met her in her courtyard. Later on the accused persons were arrested and brought to Thana. The accused Manoj Yadav disclosed that the informant happens to be his Bhabhi, whereafter she identified him as such. It would appear from her evidence that she is not eye witness to the actual commission of abduction of the child, as well as his recovery.

9. However, some more details of prosecution case emerge from the evidence of the investigating officer. His evidence is to the effect that he learnt from the informant that Manoj Yadav was assuring the informant PW 9 that he can secure release of the abducted child. On basis of aforesaid version of the informant, he arrested Manoj Yadav from the house of PW 9 and took his confessional statement. On confession of appellant Manoj Yadav, the Investigating officer recovered the abducted boy from the house of accused Lalu Yadav and Chattar Yadav, and thereafter he arrested all the accused persons and brought the child to the house

of the informant.

10. Learned counsel appearing for the State submits that the prosecution has been able to bring home the charges under section 364A of the IPC against all the appellants. Further the investigating officer in his evidence stated that on confession of Manoj Yadav, recovery of child was made from the house of accused Lalu Yadav and Chattar Yadav, and as such the evidence of appellant Manoj Yadav would be admissible. Thus there are strong circumstances which point to the guilt of the appellants.

11. Mr. Ajay Kumar Thakur, learned counsel appearing for the appellants submits that the learned trial court has erred in law in convicting the appellants under section 364A of the Indian Penal Code, as the informant, in her statement, has nowhere stated that there was a demand for ransom by the accused persons, much less by these appellants. He next submits that there is no evidence that the child was recovered from the premises of the appellant Lalu Yadav and Chattar Yadav, as there is no eye witness to the said effect. Police has not made any seizure nor the child was produced before the Court. On these premises, Mr. Thakur submits that the learned trial court erred in not appreciating these points in its judgment, as such, the appellants deserve at least the benefit of doubt.

12. We have heard learned counsel for the parties and perused the materials on record.

13. We find serious infirmities in the investigation by the Investigating officer (PW 8) who in paragraph 18 of his deposition stated that he neither prepared seizure list with respect to the recovery of the child nor did he record statements of any nearby person nor did he record the description of the place from where the child was recovered. Besides this, accused persons were not put on test identification parade.

14. After giving our conscious consideration to the materials on record, we are of the view that the prosecution has not been able to establish the charges under section 364A of the IPC against the appellants. We are also of the view that prosecution has not brought relevant material to substantiate the charge even under section 363 of the IPC. There is no iota of evidence on record with respect to recovery of the child from the house of appellants Lallu Yadav and Chattar Yadav on the basis of confessional statement of appellant Manoj Yadav.

15. In the result, both appeals are allowed and the impugned judgment of conviction and order of sentence dated 08.04.2010, passed by the Additional Sessions Judge FTC 2, Lakhisarai in Sessions Case No. 142 of 2008, GR.No.379 of

2006 arising out of Lakhisarai Police station Case No. 171 of 2006), passed against the appellants of these two appeals, above named, are set aside. They are acquitted of the charges.

(Samarendra Pratap Singh.)

(Aditya Kumar Trivedi, J)

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