

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.191 of 2011

(Against the Judgment of conviction dated 21.02.2011 and Order of sentence dated 26.02.2011 passed by the Additional Sessions Judge, Fast Track Court-II, Rohtas at Sasaram in Sessions Trial No.203 of 2009).

Om Prakash Tiwary, son of Rabindra Tiwary, resident of village - Khaira Bhudhar, Police Station - Bikramganj, District – Rohtas.

..... Appellant.
Versus
The State of Bihar
..... Respondent.
with

Criminal Appeal (DB) No. 258 of 2011

(Against the Judgment of conviction dated 21.02.2011 and Order of sentence dated 26.02.2011 passed by the Additional Sessions Judge, Fast Track Court-II, Rohtas at Sasaram in Sessions Trial No.203 of 2009).

Pintu Yadav, son of Sri Sheo Janam Singh Yadav alias Sheo Janam Yadav, resident of village and post - Ghosia Kala, P.S. Bikramganj, District - Rohtas at Sasaram.

..... Appellant.
Versus
The State of Bihar
..... Respondent.
with

Criminal Appeal (DB) No. 805 of 2011

(Against the Judgment of conviction dated 14.06.2011 and Order of sentence dated 15.06.2011 passed by the 6th Additional Sessions Judge, Rohtas at Sasaram in Sessions Trial No.13 of 2009/T.R. 323 of 2009).

Madan Singh, son of Sri Baleshwar Singh, resident of village.- Kumhila, P.S.- Kargahar, P.O- Araruan, District.- Rohtas at Sasaram.

..... Appellant.
Versus
The State of Bihar
..... Respondent.
with

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Criminal Appeal (DB) No. 804 of 2011

(Against the Judgment of conviction dated 14.06.2011 and Order of sentence dated 15.06.2011 passed by the 6th Additional Sessions Judge, Rohtas at Sasaram in Sessions Trial No.13 of 2009/T.R. 323 of 2009).

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Manish Mahto @ Manish Ranjan @ Laddu Mahto, son of Sh. Kashi Nath Mahto, resident of village and post- Ghasia Tola, P.S.- Bikramganj, District.- Rohtas at Sasaram.

..... Appellant.

Versus

The State of Bihar

..... Respondent.

with

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Criminal Appeal (DB) No. 627 of 2011

(Against the Judgment of conviction dated 14.06.2011 and Order of sentence dated 15.06.2011 passed by the 6th Additional Sessions Judge, Rohtas at Sasaram in Sessions Trial No.13 of 2009/T.R. 323 of 2009).

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Binay Kumar Singh, son of Sri Rama Shanakar Singh, resident of village- Khandeyan, P.S. Karghar, District-Rohtas.

..... Appellant.

Versus

The State of Bihar

..... Respondent.

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Appearance :

(In CR. APP (DB) No. 191 of 2011):

For the Appellant : M/s. Ajay Kumar Thakur, Manish Kumar No.II & Abinash Kumar Advocates.

For the State : Mr. Ashwani Kumar Sinha, A.P.P.

(In CR. APP (DB) No. 805 of 2011):

For the Appellant : M/s. Satish Kumar Sinha and Angad Kunwar, Advocates.

For the State : Mr. Abhimanyu Sharma, A.P.P.

(In CR. APP (DB) No. 804 of 2011):

For the Appellant : Mr. Sanjay Kumar Pandey, Advocate.

For the State : Mr. Shivesh Chandra Mishra, A.P.P.

(In CR. APP (DB) No. 627 of 2011):

For the Appellant : Mr. Surendra Kumar Singh, Advocate.

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

(In CR. APP (DB) No. 258 of 2011):

For the Appellant : Mr. Aaruni Singh, Advocate.

For the State : Mr. S.N. Prasad, A.P.P.

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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: 26-04-2016

The Appellants, namely, Om Prakash Tiwary and Pintu Yadav {in Criminal Appeal (DB) Nos.191 of 2011 and 258 of 2011 respectively} have been convicted under Sections 364(A)/34 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life vide Judgment of conviction dated 21.02.2011 and Order of sentence dated 26.02.2011 passed by the Additional Sessions Judge, Fast Track Court-II, Rohtas at Sasaram in Sessions Trial No.203 of 2009 whereas the Appellants, namely, Madan Singh, Manish Mahto alias Manish Ranjan alias Laddu Mahto and Binay Kumar Singh {in Criminal Appeal (DB) Nos.805 of 2011, 804 of 2011 and 627 of 2011 respectively} have been convicted under Section 364-A of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life vide Judgment of conviction dated 14.06.2011 and Order of sentence dated 15.06.2011 passed by the 6th Additional Sessions Judge, Rohtas at Sasaram in Sessions Trial No.13 of 2009/T.R.323 of 2009.

2. The case of the Informant Krishna Sharma is that on 30.08.2008, his cousin nephew Ramu Sharma alias Sriram Sharma alias Chalu Sharma (Not Appellant) aged about 18 years came to his house and took away the child Sahil aged about 5 ½ years on the pretext of taking him to 'Mela'. However, they did not return so they

got worried and instituted the present complaint after having failed to find the child at different places. He stated that the reason for the occurrence was some litigation between them.

3. For the said case, two separate Sessions Trials were held, i.e., Sessions Trial No.203 of 2009 and Sessions Trial No.13 of 2009 and in both the Sessions Trials, most of the witnesses are summoned.

4. In Sessions Trial No.13 of 2009, Appellants Madan Singh, Manish Mahto alias Manish Ranjan alias Laddu Mahto, Binay Kumar Singh and one Vishwajit Singh alias Chandan Singh were put on trial, out of which Vishwajit Singh alias Chandan Singh was acquitted whereas rests have been convicted and sentenced as mentioned earlier. In Sessions Trial No.203 of 2009, Appellants Om Prakash Tiwary and Pintu Yadav were put on trial and both have been convicted and sentenced as mentioned earlier.

5. It appears that of Sessions Trial No.13 of 2009, P.W.5 Sarita Devi, the mother of the victim was examined as P.W.8 in Sessions Trial No.203 of 2009 whereas P.W.6 Surya Narayan Thakur as P.W.2, P.W.7 Krishna Sharma as P.W.14, P.W.8 Sahil Kumar as P.W.9, P.W.9 Upendra Prasad Singh as P.W.5, P.W.10 Ekram Singh as P.W.6, P.W.11 Kamlesh Kumar as P.W.7, P.W.12 Permanand Chaudhary as P.W.1, P.W.13 Jageshwar Prasad Singh as P.W.13, P.W.14 Anand Lal Mahto as P.W.4, P.W.15 Sheshnath Prasad as

P.W.12.

We, thus, find that of Sessions Trial No. 13 of 2009, P.W.1 Gulam Subhan, P.W.2 Shambhu Ram, P.W.3 Jai Govind Singh and P.W.4 Ram Badan Singh were not examined in the subsequent trial. Instead, it appears that P.W.3 Vijay Kumar, P.W.4 Anand Lal Mahto and P.W.11 Chandra Shekhar Prasad Rai were the three extra witnesses examined in Sessions Trial No.203 of 2009.

It appears that the factum of occurrence is not challenged by the Appellants and it is only the complicity of the Appellants which is called to question.

6. **In Sessions Trial No.13 of 2009:** P.W.1 Gulam Subhan and P.W.2 Shambhu Ram, formal witnesses whereas P.W.3 Jai Govind Singh, seizure list witness, have been declared hostile.

7. P.W.4 Ram Badan Singh is also a formal witness.

8. P.W.5 Sarita Devi, the mother of the victim boy, stated in both Sessions Trials that while she was at her home, Chalu Ram (Named accused of First Information Report) came and took away her child to see the 'Mela' and did not return. Thereafter, calls of ransom was received whereafter, the child was recovered alongwith Appellant Madan Singh.

Evidently, this witness is relevant only to the point of the child being taken away by Chalu Sharma, who was not put on trial. So far as Calls of ransom and recovery of the boy with the Appellant

Madan Singh is concerned, since she was not at the place from where the child was recovered, her evidence to this extent is, hearsay.

9. P.W.6 Surya Narain Thakur, grandfather of the victim, is also on the point of child having been taken away by Chalu Sharma to 'Mela' from where he disappeared. He alleged that Chalu Sharma had kidnapped the child for ransom. He also testified that calls of ransom were made on the phone of his son. He disclosed that the Informant had given Rs.3,30,000/- to Manish Mahto, Pintu Yadav, Madan Singh and 2-4 others, whose names he did not remember. He also testified that, subsequently, the child was recovered who was in custody of another person but his name he did not remember. He stated that he did not know any of the accused persons by face.

When this witness was examined as P.W.2 in S.T. No. 203 of 2009 he merely stated that apart from Chalu Thakur, Chandan, Appellant Madan and two others were involved. From his evidence, there is no indication as to how he had deducted the complicity of the accused persons.

10. P.W.7 Krishna Sharma is the Informant, who stated that on 30.08.2008, his son had been taken away by Chalu Sharma to 'Mela' from where he did not return. He instituted a report after the child was not found which he proves as Ext.2. About three months earlier, Chalu had an altercation with him and it was for this reason, the child had been kidnapped. He further stated that on 08.09.2008, he

received calls for ransom of Rs.10,00,000/- failing which the child would be murdered, so he tried to lower down the ransom amount which came to Rs.3,30,000/-. He was told to come at a certain place where he reached and met some persons as also left the money under the tree and saw Appellants Manish Mahto, Madan Singh, Om Prakash Tiwary, Rakesh Sharma, Lalan Chaubey, and Meena Devi coming there who lifted the money which he had left. In the evening, they told him that the child would be reached near Narayan Medical Post Office, Kumhrar. There were also 3-4 persons there whom he did not identify. After taking the money, the child was not returned and instead was recovered from Nokha Kali Mandir where even the Appellant Madan Singh was arrested. He identified the Appellants Manish Mahto and Madan Singh in court with specific overt acts.

He thus named Appellant Om Prakash Tiwary who was not facing trial in this Sessions Trial.

At this stage, it would be relevant to discuss the Informant's evidence recorded in Sessions Trial No.203 of 2009 which trial Appellants Om Prakash Tiwary and Pintu Yadav were facing where he was examined as P.W.14. After having repeated the entire story of the disappearance of the child and demands of ransom, he stated that as per the phone calls, he met two persons, namely, Appellant Manish and one Sharma, who called him to Rajpur, about two kilometers away, near the tree and they instructed him to keep the

money there on phone so he kept the same there. However, he did not identify the 2-4 persons who came to take the money. After the money was paid, the child was not recovered from the place where he was to be present as per the kidnappers and later he reached the place where the child was handed over to him.

He was declared hostile on the point that after the calls of ransom were made, he had not met any of the kidnappers.

His attention was drawn to the earlier statement that he had earlier stated that for the first time when the kidnappers had called, Chandan Singh alias Vishwajeet Singh had taken him to Nokha and got him to meet Appellant Manish Mahto alias Laddu alias Manish Ranjan Mahto and Pintu Yadav and said that these persons would help him in recovering the child. He stated on his own that Chandan Singh had taken him to meet two persons but he did not know them but he could identify them by face. He also stated that the accused persons had threatened him of dire consequences if he would reveal their complicity.

11. The next witness Sahil Kumar victim has been examined as P.W.8 and was aged about merely six years at the time of deposition and probably five years at the time of his kidnapping. After being tested for his understanding, he stated that he had been kidnapped by Chalu, Chandna, Madna, Vijaiya on the motorcycle who kept him confined for 20 days. He stated that he could identify

the persons who had done so and in court, he identified Appellants Manish Kumar, Madan Singh and Binay Singh by their faces. He did not identify Chandan Singh.

Surprisingly, he was asked to disclose the entire manner of the occurrence in cross examination wherein he stated that Chalu had taken him to 'Mela' and it was Appellant Manish who had taken him on the motorcycle whereafter he was taken on a train to Dehari and was kept in a house for ten days. He further stated that when Manish had gone to take biscuit, the police came and caught him.

This witness was examined as P.W.9 in the subsequent trial and after having stated that he had been kidnapped, named Vijay, Appellants, Manish and Pintu and some others, whose names he did not know. However, their identification was not challenged even though Pintu was facing trial in the said case.

His attention was drawn to the earlier statement recorded under Section 161 of the Code of Criminal Procedure that he had not named Pintu in his statement.

We find from the evidence of Investigating Officer, P.W.12, Sheshnath Prasad, in paragraph-25 that indeed this witness had not named Pintu.

12. P.W.9 Upendra Prasad Singh, a Police Officer, posted at Dehari Police Station, Sasaram, is on the point of recovery of the child from Kali Mandir who disclosed the name of Appellant Madan

Singh. He also confessed in regard to the complicity of the other accused persons.

In cross examination, there is nothing which is of note.

13. P.W.10 Ekram Alam is the Driver, who had transported the alleged kidnappers on the rented Scorpio. However, since he did not name any of the accused persons nor identify them, his evidence is worthless.

14. P.W.11 Kamlesh Kumar is the owner of Sumo Victa, which was being driven by P.W.10 and that when the car was seized by the police during investigation, he did not name any of the kidnappers.

15. P.W.12 Parmanand Chaudhary was posted as A.S.I. at Dehari Police Station on 01.09.2008 and was part of raiding team which was keeping surveillance over the activities of the several persons for the recovery of the child. According to him, the child was recovered from Kali Mandir Sthan Nokha where one person, namely, Appellant Madan Singh was arrested. He recorded his confessional statement after which he was arrested and produced.

In cross examination, there is nothing of note except the manner in which the raiding team was constituted and had been conducted for apprehension of the victim.

16. P.W.13 Jageshwar Prasad Singh was also posted as A.S.I. of Dehari Police Station and was part of the Task Force which

had been constituted for the recovery of the child and several raids had been conducted on the confessional statement of the accused in course of which recovery of the money was made from the house of Vishwajeet Singh, Manish and Vinay Singh and also the forged passports as also the ransom amount. He stated about the apprehension of Appellant Madan Singh from whose custody the child was recovered and that on his confessional statement several raids were conducted. He described the amount which has been recovered from their houses on raid conducted by them which, according to him, was part of the ransom.

17. P.W.14 Anand Lal Mahto was also part of the raiding party which had recovered the child and handed over him to his father. He stated that Appellant Madan Singh was caught while he was trying to flee away and he disclosed the complicity of the rest of the accused persons on which raids were conducted and they were arrested and allegedly some incriminating articles were recovered. He proves the Seizure list as Ext.4/1 series. He stated that he could not remember the face of any of the accused persons.

There is nothing of note in his cross examination.

18. P.W.15 Sheshnath Prasad is the Investigating Officer, who is material witness in the present case. He stated that on 01.09.2008 while he was posted at Dehari Police Station, he received an information with regard to kidnapping of the child and he assumed

investigation. He inspected the place of occurrence as also constituted the team for recovery of the child and appointed some spies for gathering information. He also tried to locate the details of the mobile phone calls which had been made by the accused to the Informant and their tower locations on that basis as also the demand of ransom amount which had been reduced from Rs.10,00,000/- to Rs.3,30,000/-. He stated that on 17.09.2008, the Informant went to Nokha with the money where he received the phone call that he was to come with money at Rajpur Road where he met with one person who said that once the money was received the child would be released near Narayan Medical College so the Informant went to Rajpur road with the money and he was told to keep it near the tree which he did. Then two persons, out of whom he identified the Appellant Manish Mahto alias Manish Ranjan alias Laddu Mahto, came and they told him that the child would be released near Narayan Medical College. However, the child was not released. He informed the police and then once again the details of the mobile phone calls and tower locations of the same was checked. It is in this course they reached Nokha Kali Sthan where the child was recovered in presence of the Appellant Madan Singh. He allegedly disclosed the manner in which the occurrence had been committed as also the Appellant Madan Singh confessed his guilt. It is on his confession search was made at the houses of rest of the accused on the basis of which accused Vishwajit Singh was

arrested and certain incriminating articles were recovered from his possession of which seizure list was prepared. On the basis of his confessional statement, the house of Appellant Binay Kumar Singh was raided and certain amount was recovered from his possession alongwith a mobile phone. Thereafter, Appellant Manish Mahto was arrested who also disclosed his complicity and the names of the other accused persons and from his possession Rs.70,000/- was recovered and it is on his statement, the vehicle Sumo Victa, owned by P.W.11, was seized. He further stated he got recorded the statements of the witnesses, namely, Ekram Alam, the victim Sahil, the Informant Krishna Sharma and Kamlesh Singh under Section 164 of the Code of Criminal Procedure. He proves the seizure list of the articles as Ext.6 series, Ext.7 series as also of the seizure from the Appellant Binay Kumar Singh as Ext.8, of the seizure from accused Vishwajeet Singh alias Chandan Singh and his own signature on the same as Ext.4 and of the seizure from the Appellant Manish Mahto which has been marked as Ext.4/1 previously. He further proves the seizure list of the articles from the person Appellant which is marked as Ext.8/2. He also proves the confessional statement of the accused persons which is marked as Ext.5 series. He then submitted the charge-sheet against all the accused persons. He stated that he could identify all the accused persons by their face who were standing in court and he could not identify them by their names.

This witness has been cross examined on behalf of the accused but it is only on the issues which are not relevant for the purpose of this case.

19. In Sessions Trial No.203 of 2009, the additional witness Vijay Kumar (P.W.3) was the Officer Incharge of Sasaram Police Station who had made several attempts to recover the child. He further stated that he conducted raid at the houses of Appellant Om Prakash Tiwary and Rakesh Sharma but they could not be arrested and the neighbours had merely disclosed to him that a child had been kept in the house of the Appellant Om Prakash Tiwary and Meena Devi and they were not of good character.

In cross examination, he stated that he did not know the Appellant Om Prakash Tiwary.

We, thus, find even though he had tried to show the complicity of the Appellant Om Prakash Tiwary but the material is not cogent enough.

20. P.W.10 Jagdish Tiwary and P.W.11 Chandra Shekhar Prasad Rai, the additional witnesses in Sessions Trial No.203 of 2009, were declared hostile.

21. On going through the evidence of the witnesses, we find that the Informant in Sessions Trial No.13 of 2009 named six persons, namely, Appellant Manish Mahto alias Manish Ranjan alias Laddu Mahto, Madan Singh, Om Prakash Tiwary, as well as Lalan



Chaubey, Rakesh Sharma and Meena Devi, who were not put on trial, but the Appellant Om Praksh Tiwary was not facing trial in Sessions Trial No.13 of 2009 and, therefore, his evidence to this extent is irrelevant. In the subsequent trial which Appellant Om Prakash Tiwary was facing, we find that the informant has not disclosed his name. He has not been identified by the victim. Hence, we find that there is no evidence as regards the Appellant Om Prakash Tiwary. Hence, the Appellant Om Prakash Tiwary {Appellant in Criminal Appeal (DB) No.191 of 2011} is acquitted of the charges.

22. As for Appellant Pintu Yadav {in Criminal Appeal (DB) No.258 of 2011}, we find the victim had disclosed the name of this Appellant in court but had not done so in his statement recorded under Section 161 of the Code of Criminal Procedure nor was he identified as one of the kidnappers. In such circumstances, we are inclined to acquit him also of the charges.

23. In the result, Criminal Appeal (DB) No.191 of 2011 filed on behalf of the Appellant Om Prakash Tiwary and Criminal Appeal (DB) No.258 of 2011 filed on behalf of the Appellant Pintu Yadav are allowed. These Appellants are on bail, therefore, they are discharged from the liabilities of their bail bonds.

24. As for the circumstances appearing against the Appellants, Madan Singh {in Criminal Appeal (DB) No.805 of 2011}, Manish Mahto alias Manish Ranjan alias Laddu Mahto {in Criminal

Appeal (DB) No.804 of 2011} and Binay Kumar Singh {in Criminal Appeal (DB) No.627 of 2011}, we find that the young victim had identified them in court and there was no reason as to why we should disbelieve him on this point.

25. No doubt, an argument is made on behalf of Appellants Mandan Singh, Manish Mahto and Binay Kumar Singh that it was for the first time they had been identified by the victim in the Court, therefore, this circumstance be not used against them. However law does not prohibit reliance on such evidence if it is found unblemished, as in the present case and therefore we do not have any hesitation in doing so.

26. We find that the child was merely 5 ½ years at the time of kidnapping and there was no reason for him to attempt to falsely implicate these Appellants and, hence, we find that when there is direct evidence against these Appellants by way of identification their conviction deserves to be maintained. The informant has also named Appellants Madan Singh and Manish Mahto as two of the persons who had come to collect the ransom amount from under the tree. Also there is consistent evidence on the point that the Appellant Madan Singh had been apprehended from the place where the child was recovered by the police team especially constituted for this purpose and, hence, there is no scope for his escape.

27. Under the aforesaid facts and circumstances, Criminal

Appeal (DB) No.805 of 2011 filed on behalf of the Appellant Madan Singh, Criminal Appeal (DB) No.804 of 2011 filed on behalf of the Appellant Manish mahto alias Manish Ranjan alias Laddu Mahto and Criminal Appeal (DB) No.627 of 2011 filed on behalf of the Appellant Binay Kumar Singh are dismissed.

It appears that Appellants Madan Singh {in Criminal Appeal (DB) No.805 of 2011} is already in custody whereas Appellant Manish Mahto alias Manish Ranjan alias Laddu Mahto {in Criminal Appeal (DB) No.804 of 2011} and Binay Kumar Singh {in Criminal Appeal (DB) No.627 of 2011} are on bail. Their bail bonds are cancelled. They are directed to be taken into custody forthwith to serve out their remaining sentences.

(Anjana Prakash, J)

(Rajendra Kumar Mishra, J)

Pradeep Srivastava/A.B. Bhardwaj.
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