

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.180 of 2011

[Against the Judgment of conviction dated 15th January, 2011 and order of sentence dated 22nd January, 2011, passed by the Additional Sessions Judge-VII, Patna, in Sessions Trial No. 1430 of 2009 arising out of Pirbahore P.S. Case No. 359 of 2008, G.R. Case No. 6468 of 2008]

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Shambhu Sharma @ Shambhu Kumar, son of Bhola Singh, resident of village Kaji Fatehpur, P.S. Belaganj, Distt. Gaya.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

with

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Criminal Appeal (DB) No. 264 of 2011

[Against the Judgment of conviction dated 15th January, 2011 and order of sentence dated 22nd January, 2011, passed by the Additional Sessions Judge-VII, Patna, in Sessions Trial No. 1430 of 2009 arising out of Pirbahore P.S. Case No. 359 of 2008, G.R. Case No. 6468 of 2008]

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Chunnu Sharma, S/O Ram Uday Sharma, resident of village - Musi, P.S. - Tekari, District - Gaya.

.... Appellant/s

Versus

The State of Bihar.

.... Respondent/s

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Appearance :

(In CR. APP (DB) No.180 of 2011)

For the Appellant/s : Mr. Ajay Thakur, Adv.
Mr. Manish Kumar, Adv.

For the State : Mr. S.C. Mishra, A.P.P.

(In CR. APP (DB) No.264 of 2011)

For the Appellant/s : Mr. Ram Parvesh Kumar, Adv.

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

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CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

and

HONOURABLE JUSTICE SMT. ANJANA PRAKASH

ORAL JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA PRAKASH)

Date: 25-04-2016

Heard learned counsel for the Appellants and learned Additional Public Prosecutor.

2. Both the Appellants have been convicted under Section 364A Indian Penal Code and sentenced to undergo rigorous imprisonment for life and a fine of Rs.25,000/- each, in default of which further to undergo one year rigorous imprisonment as also sentenced to undergo rigorous imprisonment for life under Section 120B Indian Penal Code passed by the Additional Sessions Judge-VII, Patna, by a Judgment of conviction dated 15.1.2011 and order of sentence dated 22.1.2011 in connection with Sessions Trial No. 1430 of 2009 arising out of Pirbahore P.S. Case No. 359 of 2008, G.R. Case No. 6468 of 2008.

3. The case of the Informant Raju Prasad Gupta (PW 1) is that his son Abhishek Kumar aged about 18 years and Md. Aamir, son of Md. Israil (PW 4) left on 17.12.2008 from his Mruti Car saying that they were going to Gaya to fill form of National Open University. He had informed that he would be going to his friend Pinku and at about 12:00 noon, he called up his friend Minhaj and said that he was in Gaya and would reach Patna at night. However, at 8:30 P.M. he received a call demanding ransom of Rs.50,00,000/- and once again on 2:30 A.M. threatening him. Same calls were made to the father of Aamir i.e. Md. Israil (PW-4). The Mobile of his own son

was switched off. This information was given to the Officer-in-Charge, Pirbahore Police Station on 18.12.2008 itself by his brother PW 2 (Sanjiv Kumar @ Pappu) which was forwarded to the Court on 22.12.2008 and the same was proved as Ext. 1.

The sequence of events appears that the two victims were kidnapped by some persons and confined at the various places and lastly recovered from under a bridge by PW-10 (Syed Afsar Hashmi), the Officer-in-Charge.

4. During Trial, the Prosecution examined ten witnesses out of whom PW 1 (Raju Prasad Gupta) is father of one of the victims who stated about disappearance of his son and subsequent search for him as also that when he handed over a black bag containing some money, two persons namely one Rakesh and Appellant Shambhu were apprehended by the Police along with the bag and from their possession, a pistol was recovered. On their disclosure, his son and the other victims were recovered from the possession of Appellant Chunnu Sharma.

He identified all the accused persons in Court. His attention was drawn to the earlier statement saying that he had not stated about having received calls for ransom as also that there had been bargaining in regard to the quantum of ransom and he had also joined the Police in search of his son and it was when the bag was

being handed over to the two accused that they were caught. He also denied the suggestion that in fact, the victims had not been recovered from anyone's possession.

5. PW 2 (Sanjeev Kumar @ Pappu) is the brother of the Informant who confirmed the fact that he was given the written report at the Police Station and, thereafter, several rounds of meeting was held for recovery of his nephew. He stated that he had also joined the search for recovery of the boy on the instructions of the accused but he had reached after the Appellant Shambhu and accused Rakesh had been apprehended. However, he stated that two were brought to Makhdumpur Police Station where they were closely questioned and it is on their recovery statements, both the victims were recovered.

In cross-examination, he stated that his nephew Abhishek was not interested in studies and also that he was not examined by the Police even though he had attended several rounds of meetings with the Police.

6. PW 3 (Sunita Devi) is the mother of the victim Abhishek who is merely on the point of disappearance of her son and demand of ransom and his recovery. Since she has not named any of the accused persons, she is relevant only on the point of kidnapping and demand of ransom.

7. PW 4 (Md. Israel) is the father of the other



victim Aamir who stated that his son had left with Abhishek (PW 7) in the morning of 17.12.2008 and, thereafter, disappeared. At night he had received calls of ransom on two occasions and, thereafter, he had conferred with the father of Abhishek i.e. PW 1 who had given his written report to the Police Officers. In this course, Police Officers kept vigil and as per planning, they reached Police Station on 21.12.2008 at 8:00 to 8:30 P.M. and left for Gaya on the instruction of the persons who were talking on Mobile with PWs 1 and 2. However, he stated that he reached after two accused i.e. Rakesh and Appellant Shambhu were arrested with the bag containing ransom money and also after his son was recovered from the clutches of Appellant Chunnu Sharma. He stated that all of them had gone to Makhdumpur Police Station where they had questioned the accused and, thereafter, to Pirbahore Police Station where they were further examined. He further stated that on 21.12.2008, PW 10 was posted at Pirbahore and they were several parleys between themselves and the Police Officers. He explained that his son was about 18-20 years at the time of occurrence and his attention was drawn to the earlier statement in regard to the manner in which they had left for Gaya and recovered the two boys. He did not remember as to how recovery memo had been prepared on which he had signed.

8. PW 5 (Raj Kumar Prasad) another brother of the

Informant who stated that he learnt about disappearance of his nephew on 18th, whereafter, everyone had gone to Pirbahore and then he learnt from PW 1 that the nephew had been found. There is nothing which is notable in his short cross-examination.

9. PW 6 (Md. Amir Hussain) is a material witness being one of the victims. He stated that on 17.12.2008 Abhishek (PW 7) proposed to him for going to Gaya for filling up a form at which both of them left on his Maruti car at about 8:30 to 9:00 A.M. At about 11:30 to 12:00 noon, when they reached Gaya station, Abhishek (PW 7) received a call from one Amit saying that he was unwell and he was sending some persons to bring him to Bela. Then Rakesh and Appellant Chunnu came and told them that Amit Bhaiya was calling them to Bela. At this, they left for Bela where they met one Karu and other unknown persons. A little later, Appellant Shambhu with another person came on a motorcycle and then Karu told them to take them to Amit Bhaiya. Karu and Rakesh forced them on gun point to sit in the car. Appellant Shambhu himself sat in the Car in front whereas persons on the motorcycle followed. Karu also sat on the same car and administered an injection on account of which both of them became unconscious. They were taken to various locations such as Dadar village in the district of Aurangabad where they were kept in a cattle shed. All along they were threatened that they would be killed.



On 18.12.2008 in the morning Mantu, Rakesh and Appellant Shambhu, kept them in a jungle and then Appellant Chunnu came on a Marshal car along with another person and took them to Gaya Tekari village where they were confined in a room on 18th and 19th and on 20th morning, Karu came on a motorcycle and said that they would be released on the same day. Karu and Mantu both of them took on motorcycle to a nearby village where Rakesh and Appellant Chunnu came and started to wait for phone calls. On 20.12.2008, Appellant Chunnu kept them in the house of some relatives and said that he would be released on the next day. On 21.12.2008 in the morning, the Appellant Chunnu and Mantu took both of them to a nearby place, where Rakesh also came. At about 1:00 to 1:30 a phone call came on the mobile of Rakesh at which he left. Soon thereafter Mantu and Appellant Chunnu quarreled whereafter Mantu left. Chunnu told them to sit under a bridge and called up Rakesh borrowing a Mobile of some villagers and said that they were near Benga Bridge. At about 5:30 P.M., a Police Jeep and a Scorpio came on which Rakesh and Appellant Shambhu were seated. The Police then kept them safely in the car whereas Appellant Chunnu was arrested. Along with the Police, his father and that of Abhishek (PW-7) was present. They then proceeded to Makhdumpur Police Station and from there to Pirbahore Police Station at Patna. The Police



questioned them and, thereafter, they came back home. In course of conversation of the accused between themselves, they learnt their names. On 2.1.2009 his statement was recorded under Section 164 Cr. P.C. which he proves as Ext. 2. He identified the Appellant Shambhu and Chunnu in the Dock but did not identify the 3rd accused who was on bail, disclosed his name as Rajni Kant Sharma alias Pintu.

In cross-examination, he said that he was aged about 18 years and he did not know as to whether Abhishek had a license for driving the car. He stated that on 17.12.2008 about 12:00 noon when they were at Gaya Station, Rakesh and Appellant Chunnu had told them that Amit Bhaiya was calling them to Bela whereafter all of them had left for Bela. Some cross-examination is done in regard to Minhaj who was a friend of Abhishek but it has no relevance here. He stated that he had not earlier stated that he had been taken to Bela and Tekari and Gaya of Benga Bridge and also that he was given an injection only once. He describes the Benga Bridge being as a place which was meagerly populated where only 1-2 persons were passing by.

10. PW 7 (Abhishek Kumar) the other victim has given absolutely similar statement as PW 6. He also stated that on 17.12.2008, he proposed to PW 6, Aamir, to accompany him to Gaya and when he did so and reached Gaya Station, a call came from Amit



saying that he was in Bela and he was sending two boys, Rakesh and Appellant Chunnu to bring him to Bela, thereafter, Rakesh came and took him to Bela. In Bela village, they met one person called Karu. Little later, Appellant Shambhu came on a motorcycle and then Karu and some other persons on the point of pistol seated them in the car. At the back, Karu, Aamir and Rakesh were seated. Appellant Shambhu and another boy also sat along with them and took them to Dadar village in Aurangabad. On the way, Karu and Rakesh gave them injection. On 17.12.2008 both of them were kept in a cattle shed and next morning, they were taken to nearby village by Mantu, Rakesh and Appellant Shambhu where the Appellant Chunnu came on a Marshal car and from there, they were taken to Tekari village and on 18th and 19th, they were kept confined. On 20th morning, Rakesh came on a motorcycle and took both of them to a certain village and dropped them off where the Appellant Shambhu, Rakesh and Mantu were present from before. On 20.12.2008, Appellant Chunnu, kept them in the house of his relatives and threatened them that they would be killed. On 21.12.2008, he, Appellant Chunnu, Aamir and Mantu left for a village nearby where Appellant Shambhu and Rakesh were standing from before. At about 1:00 to 1:30 A.M., a call came on the Mobile of Rakesh whereafter, Rakesh and Appellant Shambhu left whereas Chunnu and Mantu stayed back. However, after a quarrel



between the two, Mantu left. Appellant Chunnu then took him and PW 6 (Aamir) under the Bridge and kept them confined, from where they were recovered by the Police. Rakesh and Appellant Shambhu had also accompanied the Police. They were then taken to Makhdumpur Police Station and from there to Pirbahore Police Station, Patna, where they were questioned. He identified the two Appellants but failed to identify Rajni Kant Sharma, the third accused. The Prosecution declared him hostile on the point of identification.

In cross examination, he conceded that he had no knowledge about preparation of any document when they were recovered nor did he know as to from whose Mobile ransom calls were being made and conceded that no TIP of Shambhu had been conducted. His attention to his statement recorded under Section 164 Cr. P.C. was drawn in regard to specifically naming the Appellant Shambhu in the roles he had narrated in Court, which he denied. There is nothing else which is of importance.

11. PW 8 (Shyama Kant Sharma) and PW 9 (Ajendra Kumar Sharma) who are on the point of recovery of a Hero Honda Motorcycle, a bike and two Mobiles, had been declared hostile saying that the seizure list had already been prepared.

12. PW 10 (Syed Afsar Hashmi) who was the Investigating Officer and another material witness, has stated that on



8.12.2008 while he was posted at Pirbahore Police Station, he received a written report from Raju Prasad Gupta (PW 1) that his son Abhishek and one Aamir left on the Maruti Car and disappeared. Repeated phone calls had been received demanding ransom of Rs.50,00,000/-. He proves the written report as Ext. 1/1. He also stated that he started investigation and inspected the place of occurrence as also tried to check up the details of phone calls made on the Mobiles. Later, in consultation with Senior Officers, the Informant left with them after due planning for apprehending the accused on the leads given by the kidnappers and then after change of various directions, they ultimately reached the point where on a motorcycle two persons came to take the bag of ransom amount. They were apprehended by the Police while accepting the bag and it is on their statement and phone calls to their accomplices, the two victims were recovered from under the Bridge, in presence of Appellant Chunnu. The Maruti car was seized from Ghosi Police Station situated at Jehanabad. He further stated that both the boys were produced before the Magistrate for examination under Section 164 Cr. P.C.

In cross-examination, he conceded that he had not made any investigation on the point of NOS document and he has not seen the driving license of Abhishek nor the owner of the Maruti car or Mobiles from which calls for ransom were made. He further stated



that on 12.12.2008, Appellant Shambhu Kumar was arrested and he was produced before the Chief Judicial Magistrate, on 23.12.2008 which was noted in the case diary. He also stated that it was on his confessional statement, raids were conducted in which the two boys were recovered. He stated that the money had been kept in the Malkhana and the statement of the victims could be recorded on 25.12.2008 since they were not in a position to speak coherently. He stated that he did not make a map of the place from where the boys were recovered. His attention was drawn to the statement of both the victims but on such minor points that they do not warrant any attention.

13. It has been submitted on behalf of the Appellants that even though, the written report was given on 18.12.2008, the same was forwarded to the Court only on 22.12.2008 when a day earlier the victims were recovered and the accused arrested which casts a serious doubt on the manner of recovery of the victims at the behest of the Appellant Shambhu Sharma and from the possession of Appellant Chunnu.

However, all these arguments appear to be indicative merely of irregularities which do not cloud the natural evidence of the two young victims, PW6 and PW7 who have given absolutely matching statements without any variations. Their lengthy, descriptive

and detailed statements are particularly trustworthy because had they attempted to make up a concocted story of kidnapping, as is the suggestion, there could be many flaws and cues leading to doubt. The identification in Court of the two Appellants is also worthy of credence. Moreover, the statements of PW 1 (Raju Prasad Gupta) and PW 4 (Md. Israel), respective fathers of the two victims Abhishek and Aamir also further corroborate the factum of kidnapping and demands of ransom. Even if the phone calls have not been traced to the accused that by itself, would not create doubt about the credibility of the demands. Fact remains that there is oral evidence in this regard. Also the arrest of the Appellant Shambhu in the circumstances as orally testified and his statements leading to the recovery of the victims from the possession of Appellant Chunnu would in our opinion be clinching circumstance which completes the claim of events leaving no scope for doubting the merit of the Prosecution case.

In view of such, finding no merit, in the Appeals, the same is dismissed.

(Anjana Prakash, J)

S.Ali/-

(Rajendra Kumar Mishra, J)

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Transmission Date	