

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.145 of 2016

=====

AGAINST THE JUDGMENT AND ORDER OF ACQUITTAL DATED 24.09.2015 PASSED BY SRI AWADHESH KUMAR DUBEY, ADDITIONAL SESSIONS JUDGE_I, SITAMARHI IN SESSIONS TRIAL NO. 838 OF 2005/156 OF 2009, ARISING OUT OF NANPUR POLICE STATION CASE NO. 76 OF 1998, GR NO.344 OF 1998.

=====

Laxmi Sah Son of Late Shobha Ram Sah resident of village - Sirasi, P.S. Nanpur, District - Sitamarhi

.... Appellant

Versus

1. The State of Bihar

2. Pappu Kumar Jha Son of Bharat Jha

3. Bharat Jha Son of Late Deo Kant Jha Both are resident of village - Sirasi, P.S. Nanpur, District - Sitamarhi

.... Respondents

=====

Appearance :

For the Appellant : Mr. Manoj Kumar, Advocate and
Mr Uday Kumar, Advocate

For the Respondents : Mr. Ajay Mishra, Addl.Public Prosecutor

=====

CORAM: HONOURABLE MR. JUSTICE I. A. ANSARI

and

HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE I. A. ANSARI)

Date: 13-05-2016

The complainant, Laxmi Sah, has filed the instant appeal against judgment, dated 24.09.2015, passed in Sessions Trial No. 838 of 2005/156 of 2009, whereby the trial Court has acquitted respondent Nos. 2 and 3 of the charges framed under sections 364, 364A and 120B of the Indian Penal Code.

2. The case of the prosecution, as unfolded at the trial, may, in brief, be described as under:-

(a) On 22.07.1998, Laxmi Sah (PW 8) filed a complaint before the Sub-divisional Judicial Magistrate, Pupri, Sitamarhi, stating therein that he is a Hindi teacher and is posted in



Government school, at Narainpur, Police Station, Pupri, in the district of Sitamarhi and resides in the rental house of Lalbabu Chaudhary. However, his family members, namely, his wife and his only son, Sanjiv Kumar, reside at their native village Sirasi, Police Station Nanpur, District Sitamarhi. His son, Sanjiv Kumar, aged 24 years, was a student of Bachelor of Science (B.Sc.) 1st Year in Chandauna College.

(b) 5 to 7 days prior to the alleged incident on 06.05.1998, one Pappu Kumar Jha came to village Sirasi and met Sanjiv Kumar and stayed, in the village, for 4 to 5 days. On 05.05.1998, Pappu Kumar Jha came to the house of Sanjiv Kumar and persuaded him to collect all his educational certificates. Later on, on 06.05.1998, at about 6 AM, Sanjiv Kumar demanded some money from his mother, who declined. However, Sanjiv Kumar left the house along with Pappu Kumar Jha. On a query made, Pappu Kumar Jha informed his mother that they were going to the college.

(C) When Sanjiv Kumar did not return by night, his mother informed the complainant, the following morning, i.e., on 07.05.1998, about the whole incident. The complainant, Laxmi Sah, tried, at his end, to locate Sanjiv Kumar. Finally, when he was unable to trace out his son, he returned to his native village, Sirasi. On reaching his village, the informant, along with his brother,

Ramautar Sah, and witness, Ram Narayan Rai, and others went to the house of Pappu Kumar Jha at Muzaffarpur on 10.08.1998, where his father, Bharat Jha, informed the complainant that his son (Pappu Kumar Jha) was out of station. The complainant dejectedly returned to his place of work at Pupri.

(d) On 11.05.1998, complainant's landlord, Lalbabu Chaudhary, informed him about a telephone call from Katalwari Mohalla seeking ransom of 5 lacs in lieu of freeing his son. On receipt of information, the complainant went to Katalbari. But he failed to trace out the person, who had made the call for ransom. On 14.05.1998, Bharat Jha disclosed that his son Sanjiv Kumar had come to his house along with Pappu Kumar Jha, but they left the house on 07.05.1998 and not returned thereafter.

(e) The complainant, in the meantime, on 07.05.1998, learnt from one of the co-villagers, namely, Sone Lal Sah @ Sadhu that Sanjiv Kumar and Pappu Kumar Jha had come to his Tea Stall and had taken tea and biscuits. Sone Lal Sah further stated that Papu Jha told him that Sanjiv Kumar had come to purchase a tractor. On 11.05.1998, the complainant learnt from his cousin, Ram Sagar Sah, that he had seen Pappu Kumar Jha and Sanjiv Kumar at Muzaffarpur Railway Station, where they disclosed that they were going to Delhi in search of job.

(f) In spite of hectic search, no whereabouts of his son could be found by the complainant. In the meantime, he again received a ransom message for Rs.6 lacs. The complainant, thereafter, proceeded to the police station for institution of the case. As the police refused to register the case, the complainant filed a complaint in the court of the Sub Divisional Judicial Magistrate, Pupri, Sitamarhi, giving rise to Nanpur Police Station Case No.76 of 1998 dated 13.08.1998, under Section 364 of the Indian Penal Code.

3. On completion of investigation, police submitted charge sheet against respondent Nos. 2 and 3, whereafter cognizance of offences was taken under Sections 364, 364A and 120B of the Indian Penal Code. The case was committed to the Court of Session, on 09.12.2005, for trial giving rise to Sessions Trial No.838 of 2005.

4. The prosecution, in course of trial, examined altogether 11 witnesses to establish its case. PW 1 is Ramautar Sah, PW 2 is Lalbabu Chaudhary, PW 3 is Pramod Mishra, PW 4 is Hira Ram, PW 5 is Urmila Devi, PW 6 is Sonalal Sah @ Sadhu Sah, PW 7 is Maheswar Baitha, PW 8 is Laxmi Sah, PW 9 is Niraj Kumar, PW 10 is Ram Sagar Sah and PW 11 is Siaram Rai.

5. The prosecution also produced documentary evidence in support of its case. Out of them, Exhibit No. 1 is the complaint, Exhibit No. 1/1 is case registration number and signature of police

officer on compliant, Exhibit No.2 is First Information Report, Exhibit no. 3 is Inland Letter, Exhibit No.4 is Informatory Petition No. 330 of 1999, dated 07.08.1999. Exhibit No.4/1 is Informatory Petition No. 334 of 1999, dated 07.08.1999 and Exhibit No. 5 is certified copy of order, dated 05.02.2002, passed in C1/1602/98.

6. Defence, too, examined 4 witnesses to prove their innocence and false implication. DW 1 is Prabhu Mistri. DW 2 is Ram Udar Mishra. DW 3 is Pappu Kumar Jha @ Vipin Kumar Jha, whereas DW 4 is Bharat Jha. They have also produced documentary evidences. Exhibit No. A is certified copy of Informatory Petition No. 240, dated 11.06.2010. Exhibit No. B is Bihar State Welfare Manual. Exhibit No. C is Report of information. Exhibit No. D is notice, dated 27.11.2010. Exhibit No. E to E/2 are certificates of accused Pappu Kumar Jha. Exhibit No. F to F/2 are mark sheets of accused Pappu Kumar Jha. Exhibit No. G to G/2 are Admit cards and Exhibit No. H is College Leaving Certificate, dated 29.08.2008. Statements of accused were recorded under Section 313 of the Code of Criminal Procedure to which they pleaded not guilty. On conclusion of trial, the learned trial Court acquitted the accused persons holding that the prosecution had failed to bring home the charges framed against the accused persons, beyond all reasonable doubts.

7. Assailing the impugned judgment, learned counsel, appearing for the State, submits that the prosecution has failed to consider the consistent evidence of eye witnesses, namely, PW 1 (Ramautar Sah), PW 5 (Urmila Devi), mother of the victim, and other witnesses that the victim was last seen in company of accused Pappu Kumar Jha, and his father, Bharat Jha, also connived with him.

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

9. We find that the learned trial Court has meticulously considered the evidence of all the witnesses and has come to the clear conclusion that the evidences are not only inconsistent, but suffers from inherent contradictions as well. PW 2 (Lalbabu Choudhary), admittedly, does not reside at village Sirasi. PW 1 is a hearsay witness. Likewise, PW 10, Ram Sagar, is also not resident of village Sirasi, where occurrence took place. Besides this, PWs. 4 and 6 are hearsay witnesses on the point of occurrence. PW 11 (Siaram Rai), advocate clerk, is a formal witness. Apart from the plea of last seen, there is no cogent material to even suggest that the respondents, in fact, had abducted Sanjiv Kumar for ransom. There is no evidence on record that the victim, Sanjiv Kumar, did not reach the college. Plea of motive taken by the prosecution side has

also been disbelieved by the learned trial Court and we have no means to differ. Furthermore, the complaint case was lodged after a delay of 70 days with no plausible explanation, which, too, casts doubt on the veracity of the prosecution case.

10. Situated thus and for the reasons discussed above, we do not find any reason to interfere with the impugned judgment of acquittal and the in the result, this appeal is dismissed.

(I. A. Ansari, ACJ)

(Samarendra Pratap Singh, J)

Shashi.

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	