

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.823 of 2013

Arising Out of PS. Case No. -165 Year- 2005 Thana -SAKRA District- MUZAFFARPUR

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RAM BABU RAI SON OF RAM ASHISH RAI, RESIDENT OF
VILLAGE-DADPUR, POLICE STATION-MUFASSIL, DISTRICT-
SAMASTIPUR.

.... APPELLANT/S

VERSUS

THE STATE OF BIHAR

.... RESPONDENT/S

=====

with

Criminal Appeal (DB) No.182 of 2015

Arising Out of PS.Case No. -19 Year- 2005 Thana -SAKRA District- MUZAFFARPUR

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DWARIK RAI @ DORIK RAI SON OF LATE DHANIK CHANDRA RAI
RESIDENT OF VILLAGE - POKHRAIRA, P.S. - SAMASTIPUR
MUFFASIL, DISTRICT - SAMASTIPUR.

.... APPELLANT/S

VERSUS

THE STATE OF BIHAR.

.... RESPONDENT/S

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Appearance:

(In CR. APP (DB) No.823 of 2013)

For the Appellant/s : MR. PRAMOD KUMAR SINGH, ADV.
MR. AMITAB BHARDWAY, ADV.

For the State : MR. A.K. SINHA, APP

(In CR. APP (DB) No.182 of 2015)

For the Appellant/s : MR. ABHAY SHANKAR SINGH, ADV.

For the State : MR. A. SHARMA, APP

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CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD

And

HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI)

Date: 14-06-2016

Cr. Appeal (DB) No.823 of 2013 wherein Ram Babu
Rai happens to be the appellant and Cr. Appeal (DB) No.182 of 2015
wherein Dwarik Rai @ Dorik Rai happens to be appellant commonly
originate against the judgment dated 10.07.2013 and sentence dated
23.07.2013 passed by Ad-hoc Additional Sessions Judge, IV,
Muzaffarpur in Sessions Trial No.330 of 2009 on account thereof,

both the appeals have been heard together and are being disposed of by a common judgment.

2. Both the appellants, namely, Ram Babu Rai and Dwarik Rai @ Dorik Rai have been found guilty for an offence punishable under Section 364/34 of the IPC and each one has been directed to undergo imprisonment of life as well as also fined Rs.5000/-each, in default thereof, to undergo imprisonment of one year additionally.

3. Alleged victim Amresh Kumar (PW.2) gave his fardbeyan on 18.01.2005 at about 05:15 AM at the house of Dorik Rai, son of Late Dhanik Chandra Rai at village-Pokhrai, P.S.-Mufassil, District-Samastipur before the Officer-in-charge Sakra P.S. alleging inter alia that on preceding night while he was sleeping, at about 11:30 PM one person called Dr. Saheb. Perceiving the same to be a patient as he happens to be engaged in "Titali Center", he came out and saw ten persons standing who caught hold him. One of them was armed with rifle while others were armed with small weapon. Some were armed with Danda and some were carrying Jhola. He protested on account of which, they began to assault. During course thereof, he has seen one Vijay Kumar Chaudhary @ Birju who was resident of adjoining village and who attempted to conceal himself. Then, thereafter, all of them dragged him towards northern direction. After covering some distance, some of them left. Some of them took him to mango orchard at village-Jagdishpur where tied his hand, mouth and eye and thereafter, carried him on bicycle. It has also



disclosed that during course of way, the miscreants were calling each other as Ram Babu Rai, Dilip Sahni, Lal Babu Sah, Bechan Sahni. Then thereafter they administered one tablet, which he spat, later on. Then, thereafter, Dorik Rai leaving his wife Sanju Devi and Ram Babu Rai, gone along with other companions to see thereof. Wife of Dorik Rai indulged in gossiping and during course thereof, he came to know that Ram Babu Rai happens to be resident of village-Dadpur, P.S.-Mufassil, District-Samastipur. He also came to know Dilip Sahni, Lal Babu Sahni and Bechan Sahni of village-Wajidpur, Ratanpura. He could not know about the others. On the following morning police came. Perceiving presence of police, Ram Babu Rai escaped while wife of Dorik Rai was apprehended. He had further disclosed that there happens to be business rivalry along with Vijay Kumar Chaudhary and in the aforesaid background, he has been kidnapped at the instance of aforesaid Vijay Kumar Chaudhary in order to eliminate him. Furthermore, it has been asserted that on account of darkness as well as having his eye completely tied down, he failed to acknowledge the miscreants properly. He had further stated that he is unable to identify the accused. It has also been disclosed that names of the accused has been disclosed by the wife of Dorik Rai. It has further been disclosed that he had identified Vijay Kumar Chaudhary even during course of his apprehension by the miscreants.

4. On the basis of the aforesaid fardbeyan, Sakra P.S. Case



No.19 of 2005 was registered under Section 363, 364, 34 of IPC whereupon investigation commenced and after completing the same, charge sheet has been submitted. Because of the fact that wife of Dorik Rai was apprehended at the spot as alleged by the prosecution on account thereof, first charge sheet was submitted against her and that being so, her trial was separated and she was being prosecuted under different sessions trial while these two appellants have subsequently been charge sheeted and on account thereof, have faced the instant trial with ultimate conclusion as disclosed above, hence this appeal.

5. The defence case as is evident from mode of cross-examination as well as from the statement recorded under Section 313 of the Cr.P.C. is of false implication as well as complete denial of the occurrence so alleged.

6. In order to substantiate its case, the prosecution had examined altogether eight PWs out of which PW.1 is Prem Lal Rai, PW.2 is Amresh Kumar Thakur, victim, PW.3 is Chandan Thakur, nephew of PW.2, PW.4 is Yogendra Thakur, PW.5 is Ganesh Thakur, PW.6 is Ravindra Prasad Singh (Part I.O.), PW.7 is Asha Thakur, wife of PW.2 and PW.8 is Manoj Madhup the main I.O. Side by side the prosecution had also exhibited Ext.1/a-Signature over arresting memo, X/1-formal FIR, X/2-arrest memo, X/3 as well as X/4-Search cum seizure list (Photocopies) have been marked for identification. Defence had also exhibited- Ext.A-C.C. of deposition of Chandan

Thakur. PW.3 having relating to separate Sessions Trial No.399 of 2005 (Wife of Dorik Rai).

7. While assailing the judgment of conviction and sentence, the learned counsel for the appellants have raised manifold arguments. The first and foremost point happens to be that the learned lower court had failed to appreciate the evidence of the PWs in its right perspective and on account thereof, the finding so recorded by the learned lower court happens to be bad in law as well as on facts. To substantiate such plea, it has been submitted that the prosecution had failed to substantiate that PW.2 was ever abducted/kidnapped. In order to buttress such plea, it has been submitted that right from inception of the case, the story so propounded by the prosecution appears to be doubtful in the background of the fact that though there happens to be complete absence in the fardbeyan that witnesses more particularly the family members have followed to some distance during course of kidnapping while the evidence of PW.3, the nephew and PW.7 Asha Thakur, wife it is evident that they followed the victim during course of kidnapping. Had there been, then in that event, at least the family members should have taken recourse to inform the police at an earliest but, none of the family members have stated that they have had ever informed the police. In likewise way, it has been submitted that PW.2, the victim himself had not disclosed that he had mobile phone in his possession or was near the telephone booth and had occasion or opportunity to inform his well-wishers



contrary to it, PW.4 as well as PW.5 in their examination-in-chief alone have stated that PW.2 had telephonically informed them regarding the occurrence. Had there been such kind of offence then instead of police, these PW.4 and PW.5 were informed by the PW.2, victim that too before arrival of the police at the house of Dorik Rai. Whether, there was possibility to inform when there happens to be specific disclosure by the PW.2 himself that after kidnapping, his hands, mouth and eyes were tied and further, after taking him to the house of Dorik Rai, he was confined in a room having been properly closed. The aforesaid story has been brought up during course of evidence as in the fardbeyan, PW.2 victim had not spoken regarding carrying him to the house of Dorik Rai, confinement in a room and taking him out by the police therefrom. That means to say, this case has purposely been launched after taking the police in their collusion to teach a lesson to his competitor Vijay Kumar Chaudhary @ Birju along with his friend. The improbability is further found strengthen from the fact that after recovery of PW.2, he neither disclosed that he had informed PW.4 as well as PW.5 nor had shown mobile phone which he was possessing to the police.

8. It has also been submitted that aforesaid event is found further strengthen from the evidence of PW.8, the I.O. The I.O. had not pinpointed the source of information by which he was informed that PW.2, the victim was taken to village- Pokhraise which happens to be 10-12 miles away from the village Bahramapur, native place of

PW.2 the victim and further, was confined at the house of Dorik Rai. Arrival of police at the place of Dorik Rai without having proper information is suggestive of the fact that presence of PW.2 at the house of Dorik Rai was well known to them since before and on account thereof, creates doubt over the manner of occurrence as suggested by the prosecution, even if considering the prosecution case, for a moment.

9. Apart from this, it has also been submitted that from the fardbeyan, it is evident that the aforesaid fardbeyan was recorded by one Mr. Md. Islam, S.I., who happens to be Officer-in-charge of Sakra P.S. but, the aforesaid police official neither took investigation at his own nor been examined by PW.8 during course of investigation. His evidence was required to be placed in the background of the fact that PW.8 had himself disclosed that he was informed by the Officer-in-charge regarding kidnapping, and so, at least had divulged source of information more particularly in the background of the fact that PW.4 and PW.5 have stated that they were informed by PW.2, victim himself and the time so disclosed by them happens to be prior to arrival of police at the place of Dorik Rai. Then in that event, it was expected at the end of PW.2 to have informed the police also which, from the evidences of the PWs more particularly PW.8 is found unanswered.

10. Contrary to it, from the evidence of PW.3, it is evident that he had stated that police was informed from a telephone booth

but again the IO PW.8 failed to discharge impartial investigation whereunder, would have at least identified the telephone booth, its proprietor and further, whether any telephone call was made to the police officials and if so, at what time.

11. Furthermore, it has also been submitted that though no cross-examination has been made on that very score nor it has been suggested to PW.2 but his presence along with the wife of Dorik Rai in a room speaks otherwise, even if accepting the version of prosecution. Elaborating such eventualities, it has also been pleaded that when victim was inside the room, having door locked, then how he came to know that Dorik Rai had left the place along with other co-accused, leaving behind his wife and Ram Babu whose presence, PW.2 never spoken inside room. Apart from this, there was any occasion for acknowledgement of Ram Babu with full address. In likewise manner, the women being wife of Dorik Rai. How he came to know that Ram Babu escaped perceiving presence of police.

12. Presence of police officials appear to be in preplanned manner as PW.8 had not stated that except PW.2 as well as wife of Dorik Rai, other family members of Dorik Rai was present. Whether house of Dorik Rai was searched to trace out other miscreants, PWs. Also failed to disclose.

13. Per contra, it has been submitted on behalf of learned APP that finding of guilt recorded by the learned lower court happens to be in accordance with law, after proper appraisal of the evidence



having been adduced on behalf of prosecution. It has also been submitted that from the evidence of PW.2, PW.8 supported with documentary evidence, there happens to be no controversy with regard to apprehension of wife of Dorik Rai along with PW.2 from the place of Dorik Rai. The learned Additional Public Prosecutor has further submitted that no offence under Section 364 of 2004 of the IPC is made out in the background of the fact that there happens to be deficiency in the evidence of the prosecution on that very score. However, the learned Additional Public Prosecutor has submitted that an offence punishable under Section 365 of the IPC is made out and so, the conviction and sentence so recorded by the learned lower court be accordingly, modified.

14. It is needless to say that the date of occurrence has been shown in the night of 17/18-01-2005. Certainly, it was a winter season. Being a remote area and further, none of the witnesses have claimed or disclosed the source of identification, could not have allowed any of the prosecution witness including the victim to identify the culprit and that happens to be reason behind that in the fardbeyan itself it has been specifically mentioned that on account of darkness and on account of having his eyes duly tied, the informant could not be able to identify the accused and further, failed to claim to identify the accused, subsequently. In the background of aforesaid facts when the evidence of PW.2 is taken up, it is evident from para-1 of his examination-in-chief alone that the miscreants took him away



towards northern side of house to an orchard where his hands, mouth, eyes were tied and then covering distance of 10-12 KM over bicycle, he was confined in a room, where was administered sedative. Sanju Devi and Ram Babu Rai were left to look after while Dorik Rai accompanied his other associates. After sometime police came. Ram Babu escaped therefrom while Sanju Devi was apprehended. During cross-examination at para-5 he stated that he reached at 03:30 AM. Then thereafter he was locked in a room. He is unaware whether room was locked or not from outside but door was closed. His eye was closed. His eyes, hands, mouth were not untied. Sedative was administered in the said condition. Police came and took him out from the room. His hands, eye, were untied by the police. He had not stated that Sanju and Ram Babu were inside the room. He had not stated that there was light inside the room. He had not stated that sedative was provided by either of them. He had not stated that Dorik Rai instructed his wife and Ram Babu to keep watch over him, as he was going to see off his other companions. Then, in that event claiming identification by the PW.2 became highly improbable. In the background as well as in the background of the fact that PW.2 had clearly stated under para-4 of his cross-examination, that he was not identifying these persons since before, makes the identification in court doubtful and no reliance could be placed over the same. Otherwise, it smacks same foul smell, in case his evidence over identification as well as presence of Dorik Rai's, place is accepted,

than the case of kidnapping, as alleged.

15. Because of the fact that except PW.2 none had claimed that PW.2 was recovered from the house of Dorik therefore, the evidence of other witnesses are irrelevant on that very score.

16. The other aspect visualizing from the evidence of the PWs should also be taken note of. PW.8, the I.O. in para-2 of his examination-in-chief had stated that he received information through Officer-in-charge that one person has been kidnapped. He along with Officer-in-charge had gone to Bahrama. They came to know that Amresh Thakur has been kidnapped and the abductors have taken away towards Samastipur. Had there been such kind of event, the police officials should have approached the family members of the victim, must have taken their fardbeyan, at least during course of evidence should have disclosed that they had contacted the family member, and further, seeing the urgency they proceeded to rescue the victim instead of recording of statement. Furthermore, presence of police officials at Pokharara, at the place of Dorik Rai has also become doubtful as none had spoken over the same. When evidence of PW.2 is considered on that score, first of all he was taken to orchard lying at village Jagdishpur, and then, after tying his hands, mouth, eye, taken on bycycle. Till his recovery, he was not known to the fact that he was taken to village Pokhrai. Then, how the police without getting any information reached at the house of Dorik and took out PW.2 from a room is a suspicious circumstances which the

IO should have explained.

17. Apart from this, from the evidence of PW.8, it is evident that the police officials came to know that abductors have taken away the victim towards Samastipur. How and in what manner they have collected information, that instead of proceeding toward, Samastipur, the abductors have taken away PW.2 to village Pokhraise and had confined PW.2 at the house of Dorik Rai, in the background of the fact that whole events materialized in the dead of night itself, and further, it happens to be midst of winter season. Therefore, conduct of the prosecution suggest that they have information regarding presence of PW.2 at the place of Dorik Rai, since before which the police was also knowing, and in the aforesaid background, certainly it would not be a case of kidnapping or abduction.

18. The evidence of other PWs have minutely been scrutinized, whereupon the infirmities in the prosecution version is found further exposed. PW.3, Nephew of PW.2 in para 1 of his examination-in-chief had himself said that he had identified Vijay Kumar Chaudhary as well as Dorik Rai amongst culprit. Further, he stated that police was informed from a booth. In para-3 he had stated that from the booth of Bijay Thakur, police was informed in between 12-1 AM. At that very time, mukhia along with 10-15 persons were present. But the I/o during course of investigation did not care to test veracity of truthfulness by identifying the telephone Booth, examining independent witnesses, and further whether names of culprit was

already disclosed to them by this PW.3.

19. Credibility of evidence of PW.3 goes out of consideration when it is taken together with the evidence of PW.4 and PW.5, PW.4 had stated that PW.2 victim had telephonically talked with them at 04:00 AM over which they had gone to Pokhraise, while PW.5 had stated that PW.2 had informed him that he is at Sindhiya. Then he along with police personal gone towards Sindhiya.

20. Now coming over identification of accused, it is evident from the evidence of PW.3 that he had not identified Ram Babu during course of examination-in-chief while claimed identification of Dorik Rai. During cross-examination at Para-4, he had stated that he had got no occasion to see Dorik Rai since before. PW.4 as well as PW.5 have not claimed identification of both the accused.

21. Now remains evidence of PW.7 Asha Thakur, wife of victim. She had identified these two appellants during course of examination-in-chief. However, when cross-examined she had stated in para-6 that it was dark night. In para-7 she had stated that there were 10-12 persons out of whom some had concealed their face by Galmocha while others have open face. In the aforesaid eventuality and further, having absence of source of identification and further, being inmate of the house, having silence over knowing since before, her evidence on the score of identification of both these appellants, appears to be shaky, motivated one. Apart from having development on that very score as is evident from PW.8, Para.18.



22. Furthermore, as per evidence of PW.2, it is evident that he was assaulted by the miscreant during course of taking him away from his house. He had disclosed in para-5 of his cross-examination that his injuries were treated by one Nilambar Jha. Neither injury report nor prescription in the pen of Nilamber Jha has been exhibited, nor is supported by injury report having in pen of PW.8. Had there been injuries over person of PW.2, certainly that would have been shown to the PW.8 who must have prepared injury report.

23. Another infirmity having been perceived in the prosecution case, is that PW.8 had not disclosed that police officials of Samastipur was informed. From evidence of PW.5, it is evident that police officials of Samastipur P.S. were present. Even from the evidence of PW.8, it is evident that he had shown presence of S.I. of Samastipur Muffasil one Trivedi over seizure list, but failed to disclose how his presence was. At least, being cognizable offence, and further accused /victim was within jurisdiction of the Samastipur District then in that event, information has to be given, with a request of assistance. PW.8 has kept mum with regard to presence of S.I. Mufassil P.S., Samastipur. Furthermore, aforesaid S.I. has also not been cited as a witness.

24. When the evidence of witnesses, more particularly PW.4 and PW.5 have been gone through, it is apparent that when they reached along with police officials, Police of Samastipur apart from Dy.S.P. as well as S.P. of Samastipur had already arrived at the house



of Dorik Rai, they have taken away, PW.2 to Samastipur P.S., and from there at 08:00 AM, PW.2 came at Sakra Police Station. In the aforesaid background, the recovery memo prepared by Sakra P.S., at 5.15 AM, and recording of fardbeyan at the house of Dorik Rai at 5.15 AM become doubtful. Contrary to it, it was expected that FIR should have been drawn at the hands of Samastipur P.S. at the first instance on account of recovery of PW.2 within their jurisdiction. Having silence at the end of PW.2, the victim on this score is a circumstance which plays an important role while considering the whole events through aforesaid angle to adjudge reliability of the prosecution version.

25. After having analytical approach of the evidences adduced on behalf of prosecution it looks unsafe to rely upon the prosecution version, whereupon the finding recorded by the learned lower court is hereby denuded and, is set aside. Both the appeals are allowed. Both the appellants are under custody, hence are directed to be released forthwith, if not wanted in any other case.

(Gopal Prasad, J.)

(Aditya Kumar Trivedi, J.)

Patna High Court
14th June, 2016
Prakash Narayan /AFR

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