

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.263 of 2011

(Against the Judgment of conviction dated 28.02.2011 and Order of sentence dated 09.03.2011 passed by the Additional Sessions Judge, Fast Track Court No.II, Nawadah, in Sessions Trial No.218 of 2009/338 of 2009).

- 1. Rayees Rajbanshi @ Rayeesh Rajbanshi.
 - 2. Yogendra @ Ggia Rajbanshi @ Yogendra Rajbanshi.
- Both are sons of Kaku Rajbanshi, resident of village - Asarhi, Police Station - Nawada, District - Nawada.

.... Appellants.

Versus

The State of Bihar.

.... Respondent.

with

Criminal Appeal (DB) No. 255 of 2011

Arising Out of PS.Case No. -0 Year- null Thana -null District- NAWADA

Md. Badruddin @ Khan, son of Md. Anwar, resident of village- Takiyapar, P.S. Bundelkhand, District- Nawadah.

.... Appellant.

Versus

The State of Bihar

.... Respondent.

with

Criminal Appeal (DB) No. 862 of 2011

Nand Kishore Rajbanshi, son of Late Karu Rajbanshi, resident of village-Asadhi, P.S Tower, P.S- Nawada, District-Nawada.

.... Appellant.

Versus

The State of Bihar

.... Respondent.

Appearance :
(In CR. APP (DB) No. 263 of 2011):
For the Appellants : M/s. Yogesh Chandra Verma, Senior Advocate, Sheo Kumar Prasad, Mrs. Rina Sinha and Mrs. Shruti Sinha, Advocates.

For the State : Mr. A.K. Sinha, A.P.P..
(In CR. APP (DB) No. 255 of 2011):
For the Appellant : Mr. Durgesh Nandan, Advocate.
For the State : Mr. D.K. Sinha, A.P.P..
(In CR. APP (DB) No. 862 of 2011):
For the Appellant : Mr. Surendra Mishra, Advocate.
For the State : Mr. Abhimanyu Sharma, 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: 23-06-2016

All the Appellants have been convicted under Section 364(A) of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life and also a fine of Rs.50,000/-, in default of which, to further undergo rigorous imprisonment for one year vide Judgment of conviction dated 28.02.2011 and Order of sentence dated 09.03.2011 passed by the Additional Sessions Judge, Fast Track Court No.II, Nawadah, in Sessions Trial No.218 of 2009/338 of 2009.

2. The prosecution case, according to the Fardbeyan of the Informant Jainarayan Lal (P.W.2), is that his son Pramod Kumar (P.W.1), aged about 17 years, left the house on 25.12.2008 saying that he is going see Christmas fair but he did not return. On 27.12.2008, in the afternoon, from the mobile phone of his son, which he mentions' an unknown person called to say that Rs.15,00,000/- should be managed and his son had been kidnapped. He also threatened him of dir consequences if the ransom amount was not paid. On the basis

of the aforesaid information, a case was instituted against unknown persons. Subsequently, the victim was recovered and since the case is based primarily on his evidence, we have to discuss the same.

3. P.W.1 Pramod Kumar, the victim, stated that the Appellant Gogia alias Yogendra suggested him that he should go to see the Christmas fair so he left alongwith him on a train. On the next morning, he said that they would not go by train and then took him to a Chicken seller's house and told that they would leave on a motorcycle. At about 07.00 P.M., he asked him to leave on train and when he accompanied him, eight persons caught hold of him and took him to an orchard on the point of pistol and tied his hands with a chain. Thereafter, the accused persons called up his father from his mobile phone and demanded ransom of Rs.15,00,000/-. On a certain date, the police in a civil dress arrived and recovered him on his cries and from the vicinity, the Appellant Rayees Rajbanshi was also apprehended. He was then produced before the court and his statement was recorded under Section 164 of the Code of Criminal Procedure which he proves as Ext.1.

He mentioned that the accused persons used to address each other as Rajju, Krishna, Netaji and he was in a position to identify all of them. They used to keep various kinds of arms. He identified the four accused persons, the Appellants Jogia, Rayees

Rajbanshi and Nand Kishore by their names as well and the Appellant Md. Badruddin, who were present in Court, which fact we have verified from the order-sheet dated 21.01.2010 by face.

In cross examination, he stated as to how he had been detained and taken to various places by the present Appellants and we are inclined to hold that he is completely truthful and reliable.

4. P.W.2 Jainarayan Lal is the Informant, who stated that on 25.12.2008, his son Pramod Kumar (P.W.1) had left saying that he is going to see a fair but he did not return and, later, his mobile phone was switched off. On 27.12.2008, his son, the victim, told him on phone that he had been kidnapped and he should be got released. The accused persons demanded Rs.15,00,000/- as ransom. He then gave his written report, which is Ext.2. In between four calls were received by him as also steps were taken to get the victim released and it was fixed that on 07.01.2009, he would pay the ransom amount so he was directed to come to a certain place, about which he informed the police, which also accompanied him in a civil dress. On 08.01.2009, the child was recovered in a dramatic manner and one of the accused Rayeess Rajbanshi was arrested. He identified his driver, the Appellant Jogia and the rest of the accused persons who had been arrested and brought to the police station.

There is nothing in his cross examination which is of note

except that the calls demanding ransom were made by unknown persons.

5. P.W.3 Manoj Kumar Paswan is merely on the factum of the occurrence.

6. P.W.4 Manoj Kumar Pandey stated that on 08.01.2009, a team had been constituted by the Investigating Officer of which he was also a member and, thereafter, at the time of handing over the ransom amount by the Informant the accused persons were trapped. The victim was then recovered after some resistance from the accused persons. He identified the accused Rayees Rajbanshi having been apprehended at the place where the victim was recovered.

In cross examination, he elaborated as to how the trap team was constituted and finally managed to apprehend the accused and get the victim released.

7. P.W.5 Guljarram Nut, who is also a member of the raiding team, stated that how they had constituted a team and got released the victim and arrested the Appellant Rayees Rajbanshi. He further corroborated the evidence of P.W.4 Manoj Kumar Pandey that some resistance was made by the accused persons who had also fired at the police party.

8. P.W.6 Bhuneshwar Prasad, a police officer, stated that on 08.01.2009, he had learnt that the Informant was to hand over the

ransom amount and trap was set up in which the victim was recovered and one of the Appellants, namely, Rayees Rajbanshi, was apprehended after some resistance.

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

9. P.W.7 Haribans Ram stated that on 29.12.2008, he received an information from P.W.2 Jainarayan Lal that his son, P.W.1 Pramod Kumar, had been kidnapped and on phone some ransom call was made upon which he instituted the First Information Report and he had assumed investigation. He, then, inspected the place of occurrence and started to coordinate with the Informant and take steps for recovery of the victim and apprehension of the accused. In course of this, on 08.01.2009, a raiding team was constituted and he, in a civil dress, proceeded to the place of occurrence, where the victim was, allegedly, confined and after some resistance, the victim was recovered from where the accused Rayees Rajbanshi was apprehended. He further stated that he got recorded the statement of the victim under Section 164 of the Code of Criminal Procedure. There is nothing which is of note in his further cross examination.

10. On going through the evidence of the prosecution witnesses, as discussed above, we find that there is consistent evidence of P.W.1 Pramod Kumar and P.W.2 Jainaryan Lal that P.W.1 Pramod Kumar had been kidnapped for purposes of ransom.

Further, the victim/P.W.1 identified the four accused/Appellants in court and also named three of them. The police officers have also stated about the apprehension of the Appellant Rayees Rajbanshi from the vicinity where the victim was recovered. The identification of the Appellants in Court appears fully reliable and natural and in our opinion no prejudice has been caused on account of non-holding of the Test Identification Parade which is the sole argument raised on behalf of the Appellants. Thus, we find that the prosecution has succeeded in proving its case against the Appellants beyond all reasonable doubt and in the result, finding no merit in these appeals, the same are dismissed.

(Anjana Prakash, J)

(Rajendra Kumar Mishra, J)

Pradeep Srivastava/A.B. Bhardwaj.

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