

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.79 of 2011

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

1. Munna Sah Son of Shri Parmanand Sah, R/O Village Kharauni, P.S. Mirganj, District-Gopalganj.

.... Appellant/s

Versus

1. The State Of Bihar.

.... Respondent/s

With

Criminal Appeal (DB) No. 1004 of 2010

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

Parmanand Sah S/o late Laxmi Sah, R/o village Kharauni, P.S. Mirganj, District Gopalganj

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

With

Criminal Appeal (DB) No. 1108 of 2010

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

Mamta Devi w/o Munna Sah, R/o village Kharawani, P.S. Mirganj, District Gopalganj

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

With

Criminal Appeal (DB) No. 1157 of 2010

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

Kanhaiya Rajbhar S/o Arjun Rajbhar, resident of village Gobarahi, P.S. Khampar, District Deoriya (U.P.)

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

Appearance :
(In CR. APP (DB) No.79 of 2011 & CR. APP (DB) No.1004 of 2010 & CR. APP (DB) No.1108 of 2010 & CR. APP (DB) No.1157 of 2010)

For the Appellant/s : Mr. Ranjeet Kumar Pandey, Advocate
Mr. Awanish Kumar Pandey, Advocate
Mrs. Rina Sinha, Advocate
For the Respondent/s : Mr. A. Sharma, APP
Mr. A.K.Sinha, APP

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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: 06-05-2016

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All the Appellants have been convicted and sentenced to R.I. for life and fine of Rs.10,000/- each under Sections 364A/34 I.P.C., in default of which rigorous imprisonment for another three months by judgment dated 21.7.2010/27.7.2010 passed by the Additional District & Sessions Judge Fast Track Court No.V, Gopalganj in Sessions Trial No.2 of 2009/ 19 of 2009.

2. The case of the Informant according to P.W.5 Rajendra is that on the night between 16/17.12.2007 two persons picked up his 9-10 years old child Rahul Kumar and ran away. When he chased them, he saw two other persons also present there from before and thereafter he alleged that seven unknown accused persons had kidnapped his son. It appears after about 20 days, the boy Rahul Kumar (P.W.17) was recovered from the house of Appellants Munna Sah, Mamta Devi and Parmanand Sah, who belong to the same family.

3. During trial, the prosecution examined 17 witnesses. Out of whom, P.W.1 Din Dayal Singh and P.W.2 Pramod Kumar, who are on the recovery of the child, have been declared hostile.

4. P.W.3 Shubhavati Devi and P.W.4 Shivjhari Devi are the two wives of the Informant (P.W.5), who are merely on the point of kidnapping of the child and they named a co-villager Satendra, who was not charge sheeted but there is no mention as to how they had learnt the names of the accused persons.

5. P.W.5 Rajendra Sah is the Informant, who stated that his child Rahul was kidnapped by four persons including Satendra Sah, Kanhaiya and Munna Sah and he did not remember the fourth name. He identified the four Appellants in Court. In cross examination he stated that he was taking the name of Kanhaiya Rajbhar for the first time in Court.

We find that he has not stated anything about the demand of ransom nor recovery of the child from the house of Appellants Parmanand Sah, Munna Sah and Mamta Devi.

6. P.W.6 Pratima Kumari is the daughter of the Informant and sister of the victim boy, who states about kidnapping of her brother and subsequent recovery from the house of Munna. However she conceded that she was naming and identifying the accused for the first time in Court.

7. P.W.7 Narendra Kumar is a member of the police party, who stated that police team had been constituted for recovery of the child and in course of enquiry they learnt that some persons were coming to take the ransom amount and then Appellant Kanhaiya

Rajbhar was apprehended. In pursuance to his recovery statement the boy was recovered from the house of Appellants Parmanand Sah, Munna Sah and Mamta Devi. In cross examination he describes the manner in which the police party was constituted and how Appellant Kanhaiya Rajbhar had been arrested.

However, we find that even though none of the family members of the victim have stated anything about demand of ransom, he has done so when trying to explain as to how Appellant Kanhaiya Rajbhar was apprehended by them.

8. P.W.8 Sheonath Pd. Yadav is a formal witness, who proves the First Information Report marked as Exhibit 2, whereas P.W.9 Arjun Ram has also proved the formal F.I.R. marked as Exhibit 3.

9. P.W.10 Abbas Ali is a signatory to the fard beyan. Surprisingly he identifies all the Appellants in the dock even though they were not named in the fard beyan nor was there any cause for him to have known their complicity.

10. P.W.11 Anwar Sah is the brother of Informant (P.W.5, who stated that he learnt from him that his son Rahul had been kidnapped and they were pressurizing him to withdraw an earlier case of kidnapping and it is for this reason that the child had been kidnapped.

11. P.W.12 Sheikh Munna is a neighbour of the

Informant, who supports the fact of kidnapping of Rahul and he states that he had not seen the present Appellants having kidnapped the boy.

12. P.W.13 Jai Prakash Singh is also a Police Officer, who is on the point of constitution of special team for recovery of the child, in course of which they apprehended Appellant Kanhaiya Rajbhar as a person who had come on a motorcycle to receive the ransom amount. It was on his statement that the boy was recovered from the house of Appellants Parmanand Sah, Munna Sah and Mamta Devi. In cross examination he has explained the place of occurrence and conceded that he did not examine any of the neighbours of the present Appellants.

13. P.W.14 Lalmuni Devi has been declared hostile.

14. P.W.15 Chandra Kishore Sah and P.W.16 Dasrath Sharma are also members of the team constituted for recovery of the victim boy and state about apprehension of the Appellant Kanhaiya Rajbhar when he had come to receive the ransom amount.

15. P.W.17 Rahul Kumar is the victim himself, who supports the factum of his being lifted from the house by unknown persons and confined in the house of Appellants Munna Sah, Mamta Devi and Parmanand Sah. He identified them in Court. On the said date a representation under Section 317 Cr.P.C. had been filed on behalf of Kanhaiya Rajbhar. So he could not be identified by the victim in Court. However, we find that there is no challenge to his

capacity of identifying him.

In cross examination he stated that he stayed in the house of the three Appellants for about 21 days and he was used to be feed well by them. He also talks about some dispute between the husband and wife in the house but he did not know the exact reasons.

16. On behalf of the defence three witnesses have been examined. D.W.1 Janak Singh has stated about partition having taken place in the house of Appellant Parmanand. D.W.2 Yogendra Singh has stated about a Complaint Case having been instituted by Appellant Mamta Devi, which was scripted by Ashok Kumar Gupta against her in-laws. D.W.3 Suresh Sah is on the point of panchayati having taken place between Appellant Munna Sah and his wife Mamta Devi and it was on that particular day that she returned from the house where the victim had been recovered.

17. On going through the evidence of the witnesses, we find that firstly there is no mention of any demands of ransom at the hands of the accused persons. Hence the Appellants cannot possibly be convicted under Section 364A I.P.C. We also find that the Informant and his family members have tried to name the Appellants as though they knew about the complicity from before but the fact of non-disclosure of their complicity in the First Information Report, such evidence has to be disbelieved. Hence we are left with the evidence of only P.W.17 Rahul Kumar, the victim, who has identified

the three Appellants, namely, Munna Sah, Mamta Devi and Parmanand Sah in Court as the three persons who had kept him confined in their house. He had also claimed to identify Appellant Kanhaiya Rajbhar on whose recovery statement the boy had been recovered from the house of the three Appellants.

18. In such circumstances, we would think that the case is well proved against all the four Appellants but they would be punishable under Section 363 I.P.C. Hence they are convicted accordingly. In our opinion, the sentence of the Appellants deserves to be modified to the period they have already undergone.

19. With the aforesaid modification in conviction and sentence, the Appeals stand dismissed.

(Anjana Prakash, J)

(Rajendra Kumar Mishra, J)

Narendra/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	