

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.1244 of 2010

[Against the judgment of conviction dated 25th September, 2010, and order of sentence dated 30th September, 2010, passed by the Additional Sessions Judge, Fast Track Court No. III, Bhagalpur, in Sessions Trial No.416 of 2008/Trial No. 281 of 2008]

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Md. Javed S/O Md. Israil Resident Of Village- Barari, P.S- Maherma,
District- Godda (Jharkhand)

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ranjit Sahay, Adv.
Mr. S.M. Ashraf, Adv.
Mr. P.K. Sinha, Adv.

For the State : Mr. A.K. Sinha, Adv.

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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: 07-04-2016

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

2. The Appellant has been convicted to undergo imprisonment for life under Section 364-A of the Indian Penal Code with fine of Rs.10,000/- in default of which further two years simple imprisonment by a Judgment of conviction dated 25th September, 2010, and order of sentence dated 30th September, 2010, passed by the Additional Sessions Judge, Fast Track Court No. III, Bhagalpur, in

Sessions Trial No.416 of 2008/Trial No. 281 of 2008.

3. The case of the Informant, Dr. Amit Kumar, PW-6, is that on 27.11.2007 at about 10:30 A.M., the Appellant came to his house and took away his father on some pretext on a red Maruti van, and, thereafter, he did not return. He alleged that the Appellant had kidnapped his father for ulterior purposes. This report was given to the Police on 28.11.2007.

4. During Trial, the Prosecution has examined altogether 11 witnesses in which PW 1 (Naru Gopal Singh) stated that on 27.11.2007 while he was near Bajrang Bali Asthan, he saw the victim Dr. A.P.S. Kamal talking with Jawed and boarding a red colour Maruti. Later, he learnt from the Informant Dr. Amit Kumar that his father had been kidnapped and he could not be found despite desperate searches. He could identify Appellant as an occupant of the Car but could not identify the rest of the persons who were seated.

In cross-examination, he tried to explain that he knew the victim because he was an LIC Agent and he himself was around the Bajrangbali Asthan from where the victim had left with the Appellant.

He also explained that he did not know the Appellant Jawed from before and in fact, the Informant had told him that the boy who had taken the victim was Jawed.

We, thus, find that there is no reason to disbelieve him

on the issue of identification of the Appellant and his evidence is very natural in this regard.

5. PW 2 (Bipin Singh @ Bipin Bihari Singh) also stated that on the date of occurrence, he had seen the victim Dr. A.P.S. Kamal talking to a fair complexioned boy and he had left saying that he was going to Sabour for LIC Policy of 3-4 military personnel and would return after 2-3 hours. At about 5:00 P.M. when he went to the clinic of the Doctor, he found that he had not returned. He also started to search for him but they were unsuccessful. He identified the Appellant Jawed who was seen talking and leaving with the victim on the fateful day. He explained the reason why he knew the victim and why he had gone to his clinic in the evening which is also very natural. He also stated that on hearing from the persons of the locality that the victim had not returned, he gone to his house.

6. PW 3 (Raj Kumar Singh @ Rinku Singh) also stated that near the Bajrangbali temple, he had seen the victim leaving with the Appellant on a red Maruti van which was being driven by the Appellant. Two persons had sat on the same on the back seat after which the Doctor did not return. When he met the Informant, he was informed as to why the victim had left with Jawed and when he was not found till the next day, the present case was instituted. In his first examination, he explained as to why he was present at the place from

where he had seen the Appellant leaving with the victim and there is nothing which would create a doubt in respect to his evidence.

7. PW 4 (Pradip Kumr Yadav) is hearsay witness who stated that on 27.11.2007 at about 7:30 P.M., the Informant Amit Kumar informed him that his father had gone to the temple from where he left with the Appellant saying that he was going to get some LIC Policies for military personnel at Subour and had not returned. He immediately went to the house of the Informant and then the First Information Report was instituted on the next date. He identified the Appellant Jawed when he was arrested and also identified him in Court. In cross-examination, he stated that the Informant was the nephew of his partner Bharat Singh and in spite of this, there is nothing which is of further note in his cross-examination.

8. PW 5 (Bharat Singh), the partner of PW 4 stated that on the date of occurrence at about quarter past nine, when he had come from the Mahavir Mandir to his house, he had seen the victim Dr. A.P.S. Kamal going to the temple from his house. When he came out of his house, he saw the victim talking to the Informant and when he asked the victim to accompany him to the Bazar, he had refused saying that he had to go to Sabour with Jawed for some LIC Policies and would return after 2-3 hours. Thereafter, he went to the Bazar. He identified the Appellant standing near the victim and the

Informant when they were talking about going to Bazar. Later in the evening, he learnt that the Doctor had been kidnapped. He also stated in his cross-examination that he was the brother-in-law of the victim and there is nothing else which is of note in the cross-examination.

9. PW 6 (Dr. Amit Kumar) is the Informant who stated that on 27.11.2007 at about 10:30 A.M. his father left with the Appellant saying that he was going to Sabour and would return after a while, till then he was directed by his father to stay in the clinic. He also corroborates the fact of PW 5 (Bharat Singh) having asked the victim to accompany him to Bazar and his refusal to do so since he had to go to Sabour to get some LIC Policies. He also saw the Appellant boarding the red Maruti Van with the Appellant and leaving with him. In the said Maruti van, two persons were also seated but he had not identified them. When his father did not return on that day till 5:00 P.M., he realized that his father had been kidnapped so the next date he instituted the First Information Report. He identified the Appellant Md. Jawed as the person who had accompanied his father and also in Court.

In Cross-examination, he explained his profession and the place of occurrence but there is nothing which would be of any consequence for the purpose of the disposal of the present case.

10. PW-7 (Dr. A.P. Singh Kamal) is the victim



who stated that on 27.11.2007 at 10:30 A.M. when he was going with Jawed from his Clinic, Jawed told him that there was an offer for getting LIC Policies of 3-4 military personnel at Sabour Fatehpur at which he left with him telling his son Amit Kumar that he was going to Sabour for this purpose and till then he would have to stay in the clinic in his absence. He boarded the Maruti Van which was standing near the Bajrangbnali Asthan at the back seat whereas Jawed sat on the Driver's seat. Thereafter, two persons sat beside him who had firearms due to which he was afraid and on the point of pistol, they fled away with him. After traveling to a certain distance, he felt thirsty to which he was given water and after consuming it, he became unconscious. When he regained his consciousness, he realized he had been kidnapped. He was removed to several locations since they were being chased by the Police. He stated that the accused persons had told him to get 50 lacs rupees from his house and later they reduced the amount to Rs.20 lacs. While his location was changed every now and then because of the pressure of the Police, he was left at certain places while the accused fled away. He then went to Mirza Chowki Police Station and explained his predicament to them whereafter he came to Tilka Manjhi Police Station. He identified the Appellant Jawed as one of the accused.

In cross-examination, several questions were asked about

his association with the Appellant Jawed and his own profession as also his relations but it is of no relevance. He stated that no ransom was paid to the accused. There is nothing else which is of note in the lengthy cross-examination.

11. PW 8 (Dinesh Singh) proved the seizure list marked as Ext. 3 and his signature as Ext. 3A and the Maruti van. Similarly, PW 9 Chhathu Yadav is on the seizure list of Maruti van on which the victim had been kidnapped.

12. PW 10 (Shashibhushan Kr. Srivastava) is the Investigating Officer who stated that on 28.11.2007 he was posted at Tilkamanjhi Police Station, he received a written report about the kidnapping of the victim. He proves the formal First Information Report which is marked as Exbt. 4. He also stated that he thereafter assumed investigation and got installed I.D. caller on the land line of the Informant. He examined several witnesses and later received information that one Maruti Van had been seen going towards Barahat and, thereafter Pirpainti on which one person was seated next to the driver. They then left for Lakshmipur village where they learnt that one Janardan Gaur who had got a red colour van so they reached his house and found the van standing there. Janardan Gaur was arrested and Maruti van was seized which seizure list is marked Ext. 5. Janardan disclosed that on 26.11.2006, Md. Jawed, the Appellant had



booked the car and along with him was a tall boy whose Mobile Phone No. was 9939326033. On 20.11.2007, the van had been brought back. The veracity of the Mobile number was sought to be verified from the internet from which it was found that the said number is in the name of one Md. Imtiyaz Khan of village Choti Kodar Jana so they left for the said village and arrested him. He was brought before Jawed who identified him as a person who had booked the car. The accused Imtiyaz stated that he had gone along with the Appellant Md. Jawed and others to Bhagalpur for kidnapping the Doctor and he had been detained in the forest of Sundar Pahari. On the disclosure statement of Md. Imtiyaz, Md. Jawed was found who gave a confessional statement. It also appeared that from the Mobile Phone of Md. Imtiyaz, ransom calls had been made. Thereafter, accused was surrendered and the area was raided and the victim was found. The victim disclosed that it was on account of the pressure of the Police that the miscreants had left him and fled away. He recorded the statement of the victim under Section 164 Cr. P.C. and, thereafter, submitted charge sheet.

He also found out the Hotel details where the victim and Md. Jawed had stayed which he proves as Ext.-6. In cross-examination, certain questions were directed about the entries in the Hotel register but they are not relevant since they are not in respect to

the present Appellant. He also stated that he did not submit any documents with regard to the ID caller or the Informant that had been gathered with regard to the Mobile phone of Md. Imtiyaz. There is no further material which is of note in his cross-examination except that the victims family had been told to inform the Police if any telephone number is registered on the caller ID.

13. PW 11 (Vidya Prasad) is a formal witness who had recorded the statement of the victim under Section 164 Cr. P.C.

14. The learned counsel for the Appellant submits that in the facts of the case, no offence under Section 364A of the Indian Penal Code is made out since there is no cogent proof in regard to demands of ransom or exchange of any money.

15. To appreciate the submission, we take note of the essential ingredients of Section 364A which is reproduced below.

364-A. Kidnapping of ransom, etc. – *Whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction, and threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt, or causes hurt or death to such person in order to compel the Government or {any Foreign State of International Inter-Governmental Organisation or any other person} to do so or abstain from doing any act or to pay a ransom, shall be punishable with death or imprisonment for life, and shall also be liable to fine}*

16. From the above, it appears that the kidnapping for the purpose of ransom is one of the major ingredients. In this case on examination of evidence discussed above, we find that there is full support by the victim himself in regard to demands of ransom. The demand need not have been conveyed to the family members of the victim. Law does not demand such a material. Undoubtedly, the victim had been confined for about four days and set free only on account of the pressure exerted by the Police. As for the complicity of the Appellant, there cannot be any dispute in its regard on appreciation of evidence of the victim PW-7 Dr. A.P.S. Kamal that it was the Appellant who had kidnapped him along with some unknown persons.

17. In such circumstances, the argument of the Appellant does not satisfy to us, and, hence, the Appeal is dismissed.

(Anjana Prakash, J)

(Rajendra Kumar Mishra, J)

S.Ali/-

AFR/NAFR	
CAV DATE	
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Transmission Date	