

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.854 of 2011

[Against the judgment of conviction dated 4th July, 2011, and the order of sentence dated 7th July, 2011, passed by the Additional Sessions Judge, Fast Track Court No. III, Aurangabad, in Sessions Trial No.210 of 2009/ 153 of 2009 arising out of Amba P.S. Case No.138 of 2008]

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Dilip Sao @ Dilip Kumar Sao, son of Sri Parikha Sao, resident of village- Kanker, P.S.-Navinagar, Dist.-Aurangabad

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Bachan Jee Ojha, Advocate

For the Respondent/s : Mr. A. K. Sinha, APP

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CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

&

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA PRAKASH)

Date: 18-04-2016

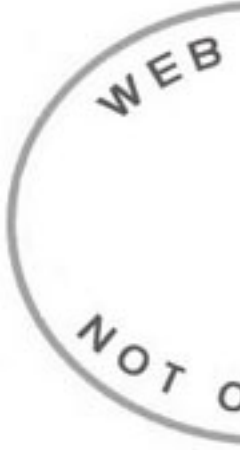
1. The Appellant has been convicted under Section(s) 364-A and 307 Indian Penal Code and sentenced to undergo rigorous imprisonment for life with fine of ₹ten thousand in default of payment of which further rigorous imprisonment for one year under Section 364-A Indian Penal Code, and further rigorous imprisonment for life with fine of ₹ten thousand in default of payment of which further rigorous imprisonment for one year under Section 307 Indian Penal Code by the judgment of conviction dated 4th July, 2011, and the order of sentence dated 7th

July, 2011, passed by the Additional Sessions Judge, Fast Track Court No.III, Aurangabad, in Sessions Trial No.210 of 2009/ 153 of 2009 arising out of Amba P.S. Case No.138 of 2008.

2. The case of the prosecution according to Arun Kumar Gupta (PW 6) is that that on 10.12.2008, his son, victim Ritik Raj, had gone to the school but did not return at 2'O clock. So, they started looking for him. In the meanwhile, a phone call was received on the mobile of his cousin brother (PW 1) asking for his mobile phone but when the caller could not contact the Informant on his phone, he asked his cousin brother to get his brother to talk to him. When he called back, a demand of ₹twelve lac was made as ransom. In the meanwhile, at about 4 PM, they received information that Md. Belal Ahmad (PW 3) had found his son in injured condition in an open field, such information was given to the Headmaster (PW 5) of the school on the basis of the uniform he was wearing after which the boy was treated at the clinic of PW 12 and 13.

3. During the course of trial, the prosecution examined fifteen witnesses.

4. PW 12, Dr. Ram Narain Singh, found following injuries on the person of the victim/injured, who was aged about six years:



- (i) Stitched wound antro-lateral on both sides of neck length 3". Clinically it is simple in nature.
- (ii) Incised wound size (a) 2" x 1/4" x 1/4" on near wrist, (b) 1 1/2" x 1/4" x 1/4" near wrist on right hand.
- (iii) Incised wound (a) 1 1/2" x 1/4" x 1/4" near left hand wrist (b) 2" x 1/4" x 1/4" near wrist left hand.

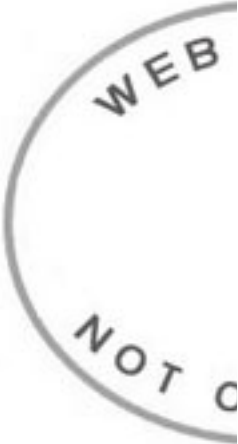
Injury No.(ii) and (iii) were caused by sharp cutting substance.

He proved his Injury Report which is marked as Ext.4.

5. PW 13, Dr. Lallan Prasad, had given first aid to the victim when he was brought by the crowd of people.

6. PW 1 (Yogesh Kumar), who is the cousin brother of the Informant, stated that on the date of occurrence his sister received a phone call on his mobile and the caller asked for mobile number of the Informant. When she supplied the number, again a call came and the caller said that call was not being connected. He then went to the house of the Informant and calls were returned. The caller disclosed his identity as Vishnu and demanded ₹twelve lacs as ransom. In the meanwhile, it was learnt from the school authorities that PW 3 (Md. Belal Ahmad) had found a boy in injured condition and had been taken to Doctor (PW 13). They also rushed and saw him injured.

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



7. PW 2 (Pankaj Kumar) is on the factum of occurrence of kidnapping as hearsay witness as also recovery of the child. He stated that he learnt that Dilip Kumar (Appellant) had kidnapped the boy. Even earlier Appellant Dilip Kumar had made enquiry from him as where the victim was studying and on the date of occurrence he had seen him in the school.

In cross-examination, he stated that he was examined 3-4 days later and he was cousin of the Informant as also he had identified the Appellant when he had attended the wedding of his cousin Ajeet Kumar. There is nothing else of note any further.

8. PW 3 (Md. Belal Ahmad) is the person, who had found the victim in an injured condition on the side of the road with severe injury on his neck, wrist, at which he called the Principal of the school traced from the dress that the boy was wearing. Later, he learnt that the boy had been kidnapped for the purpose of ransom.

In cross-examination, he stated that he was examined by the police on 13.12.2009 and that he had not stated about the factum of demand of ransom.

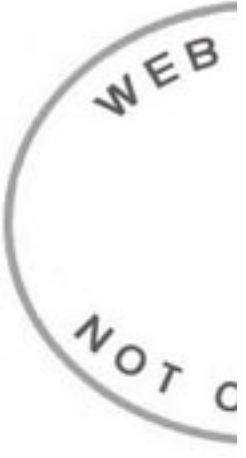
9. PW 4 (Ajeet Thakur) stated that on the fateful day when he was at Progressive Children School where the victim was studying he learnt that the boy had not returned home at

which a search ensued but he could not be found. Later, he learnt that the boy had been kidnapped and demand of ransom has been made as also he had been found injured on the same day by the side of the road.

He also stated that he had not been examined on 10.12.2008.

10. PW 5 (Ved Prakash Tiwari) is the Principal of the School where the child was studying and he stated that the boy used to come to school even though he was not formally admitted and he was informed by his aunt that the child had not reached home, so, they started to search him. Phone calls had been received with demand of ransom and thereafter the boy was recovered in injured condition. He also came to know from the victim that the boy, who had kidnapped, had scars on his face and had disclosed the name of the Appellant to him. There is nothing else which is of note except his attention to the earlier statement but the attention of the Investigating Officer had not been drawn to such statement. He denied the suggestion that he had not stated name of the Appellant which fact is corroborated by the Investigating Officer in paragraph 5 of his deposition.

11. PW 6 (Arun Kumar Gupta) is the Informant, who supports the factum of non-return of his child from the school



and subsequently learning that he had been kidnapped by the phone calls that was made for ransom and his recovery in injured condition. He proved his signature on the *fard-e-bayan* as Ext.1. He stated that the child had disclosed that a man having scars on his face, who had also attended the marriage at the house Ajeet uncle, is the person, who had kidnapped. On enquiry, it was learnt that the name of the person was Dilip Kumar.

In cross-examination, he stated that the he knew Dilip Kumar because he was his relative. There is nothing else which is of note in the cross-examination.

12. PW 7 (Nishu Kumari) was a young girl and aunt of the body studying in the same school who reported about the child not returning home and subsequent search as also information to the others. She supports the factum of demand of ransom on phone calls of PW 1 as also recovery of the boy in an injured condition. She also stated that she learnt that it was the Appellant, Dilip Kumar, who had kidnapped the child.

In cross-examination, several questions were directed to her about the attendance/presence of the victim in the school but that is completely irrelevant since factum of disappearance of the child is not challenged.

13. PW 8 (Ranjeet Kumar) is another hearsay

witness on the factum of occurrence and disclosure of the victim with regard to physical features of the Appellant, who had attended a wedding party nearby. No doubt, lengthy cross-examination ensued in regard to earlier statement but that is of no use since the Investigating Officer was not confronted with his statement.

14. The most important witness PW 9 (Ritik Raj) around six years of age on the date of occurrence, stated that he had been kidnapped by the Appellant and taken away on a bus and thereafter seriously injured on the neck and hand. He also stated that it was for the purpose of money that he had been kidnapped. He supports the fact that he attended Test Identification Parade.

In his cross-examination, there is nothing of any importance except that he had not disclosed to his father that the culprit was Dilip Kumar.

15. PW 10 (Ajeet Prasad) is the brother of the Informant, who supports that the Informant was at his house when he received information that his son had gone missing. When he rushed, he learnt from PW 1 that phone calls had been received from someone and on return call demand of ransom was made. He also proved the factum of recovery of the boy in injured condition. He conceded that it was the first time he was stating about the

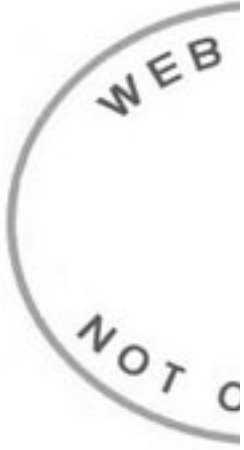
disclosure of identification of the Appellant by the victim.

16. PW 11 (Ram Rekha Ram) is a formal Investigating Officer, who concluded the investigation and submitted charge-sheet against the Appellant.

17. PW 14 (Rakesh Kumar Mishra) is the Judicial Magistrate, who confirms that on 24.12.2008 he had held Test Identification Parade in which Appellant Dilip Kumar Sao was identified by the victim (PW 9). He proved the Test Identification Parade chart as Ext.5.

Several questions were directed to him with regard to manner in which Test Identification Parade was conducted but we do not find any procedural lapse.

18. PW 15 (Anand Kumar) is the main Investigating Officer, who stated that on 12.08.2010 he was the Officer-in-Charge of Amba P.S. and instituted the First Information Report of Amba P.S. Case No.138 of 2008. He received information in regard to this occurrence and he proved his signature on the *fard-e-bayan* as Ext.8. He also stated that initially he gave application for verification of the mobile number from which demand of ransom was being made. He stated that he examined the witnesses as and when they appeared and also that he got conducted the Test Identification Parade in which the victim identified the Appellant.



He confirmed the fact that some calls had been exchanged between the mobile phone of PW 1 and another, holder of which could not be verified.

There is nothing else which is of note in his cross-examination.

19. From the evidence discussed above, it appears that there is consistent evidence on the point of forceful abduction of PW 9, who was still a child, at the hands of the Appellant, who was identified in the Test Identification Parade by the victim merely twelve days after the occurrence and of demands of ransom.

20. In such circumstances, we find that the prosecution has brought a full proof case against the Appellant which does not leave any scope for interference in the conviction of the Appellant by this Court.

21. In the result, the appeal is **dismissed**.

(Anjana Prakash, J)

J.Alam/-

(Rajendra Kumar Mishra, J)

AFR/NAFR	
CAV DATE	N/A
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