

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.99 of 2015

Arising Out of PS.Case No. -61 Year- 2013 Thana -UJIYARPUR District- SAMASTIPUR

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1. Krishnadeo Lal @ Krishna S/o Nand Kishore Lal Resident of Village Chapta,
P.S. Ujiarpur, District Samastipur.

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Baxi S.R.P. Sinha, Sr. Advocate

Mr. Randhir Kumar, Advocate

For the State : Mrs. Abha Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 06-04-2017

Challenge in this appeal is the judgment dated 30.01.2015 and order of sentence dated 31.01.2015 passed by Additional Sessions Judge, Samastipur in Sessions Trial No. 248/2013 convicting the sole appellant for an offence punishable under Sections 363, 364/511 of the IPC and sentenced him to undergo RI for five years under Section 363 IPC as well as also slapped fine of Rs. 3000/- and also sentenced to undergo RI for five years under Sections 364/511 IPC with fine of Rs. 3000/- and in default thereof, to undergo imprisonment of two months additionally with further direction to run the sentences concurrently.

2. Rinku Devi (PW 4) filed a written report on 13.04.2013 disclosing therein that her daughter aged about two years was lying on a cot in the courtyard on 12.04.2013 at about 7.30 PM.



Krishnadeo Lal @ Krishna (Accused) who happens to be resident of her own Tola, with an intention to kill her daughter lifted and ran away. She raised alarm over which, after covering some distance, appellant threw the child. However, he was apprehended by the villagers who took him to the place of Mukhiya and then thereafter, on arrival of the police, he was produced along with written report. Furthermore, it has also been disclosed that about 1 and a ½ months ago, he had committed murder whereupon, they are afraid of.

3. On the basis of the aforesaid written report, Ujiarpur PS Case No. 61/2013 was registered whereupon investigation commenced and concluded by way of submission of charge-sheet which ultimately gave a passage to the trial and met with ultimate conclusion, the subject matter of instant appeal.

4. Defence case, as has been pleaded by way of suggesting to the witnesses as well as statement under Section 313 of the Cr.P.C is of complete denial of the occurrence. It has also been submitted that a day prior to the alleged occurrence, there was dispute amongst the parties on account of which, a Complaint Case No. 158/2013 (Ext-A) has been filed whereupon this case has purposely been manufactured to implicate the appellant.

5. In order to substantiate its case, the prosecution had examined altogether eight PWs out of whom PW-1 Kiran Dev,



PW-2 Ranju Devi, PW-3 Alok Kumar, PW-4 Rinku Devi, PW-5 Santosh Kumar, PW-6 Hare Kishun Bhagat, PW-7 Ganesh Kumar Paswan and PW-8 Dhanajay Jha. Side by side, had also exhibited Ext-1 series, signatures of witnesses over arrest memo, Ext-2, Written Report, Ext-2/A, Endorsement over written report, Ext-2/B, signature of witness, Ext-3, Formal FIR. As stated above, defence had exhibited Complaint Petition No. 158/2013.

6. Now coming to the status of the witnesses, it is evident that PWs-1 and 2 are Pattidars of informant, Rinku Devi while PW-3 is co-resident. PW-4 is informant herself. PW-5 is her brother, PW-6 is her father, PW-7, Ganesh Kumar Paswan is resident of another village and PW-8 is the Investigating Officer.

7. Now coming to the status of the witnesses, it is evident that PWs-1 and 2, they both became *volte face* and on account thereof, were declared hostile by the prosecution. PW-3, Alok Kumar, as is evident from his evidence, stood as one of the witnesses of production-cum-arrest memo. So far factual aspect is concerned, he shown himself to be a hearsay witness as the occurrence so alleged was not at all seen by him.

8. PW-7 is resident of another village and shown to be a chance witness who had stated that while he was returning from station, he heard some sound of uproar whereupon he rushed and saw



Krishnadeo Lal @ Krishna running away being chased by the villagers who succeeded in his apprehension and subsequently, taken to the house of Mukhiya. Police was informed who came and took him under custody. He came to know that accused was running away after lifting the daughter of informant. He, during cross-examination at para-9 had stated that he had not seen the accused running with the child rather he came to know about the same from others. So, his status also happens to be that of hearsay so far main part of occurrence is concerned.

9. In the aforesaid background, now evidence of PWs-4, 5 and 6, daughter, son and father remained to substantiate the charge levelled against the appellant. For proper appreciation of evidence of PWs, it looks better to see the evidence of the Investigating Officer, PW-8, first.

10. PW-8 had deposed that after registration of the case, he was entrusted with the investigation whereupon he recorded further statement of the informant. Recorded statement of other witnesses. Inspected the place of occurrence. According to his finding, the place of occurrence happens to be hut of Rinku Devi having boundary North, Hari Ballabh Lal, South, Hingal Bhandari, East, Kamal Rai and West, land of father of informant as well as land of Ravindra Lal in which maize was planted. He also recorded statement of other



witnesses and then as directed by the supervising authority submitted charge-sheet.

11. During cross-examination, at para-13, he had admitted that he had not arrested the accused. He had further admitted that he had not recorded the statement of *Mukhiya*. He had further admitted at para-14, that he had not made sketch map of the place of occurrence. In para-15, there happens to be contradiction relating to relevant witnesses.

12. So, from his evidence it is evident that he had not inspected place of occurrence minutely to search out presence of courtyard and further, there was any door affixed thereupon which could have prevented the access and in likewise manner, the spot where informant PW-4 was cooking. He is also silent over source of identification. He also failed to disclose the maize field where victim was left.

13. Now coming to the evidence of PW-4, informant it is evident that in the written report neither presence of PW-5, Santosh Kumar and in likewise manner, PW-6, Hare Kishun Bhagat have been shown nor there happens to be specific disclosure as to who apprehended the appellant on chase.

14. During course of examination-in-chief, she had stated that while she was cooking at the place of her father, her daughter



aged about 2 ½ years was sleeping over a cot in the courtyard. Accused, Krishnadeo Lal @ Krishna, all of a sudden lifted her and ran away. She raised alarm over which he left the girl in a maize field. People chased him and apprehended him and took him to the place of Mukhiya. During cross-examination at para-9 she had disclosed the topography of her house which is not at all found corroborated with the evidence of PW-8, the Investigating Officer. Furthermore, she had not disclosed the source of identification. Apart from this, PW-4 is also silent over identity of the maize field where she had alleged that after lifting the child, the accused left the victim along with the fact that said place was ever shown to the I.O.

15. PW-5 is her brother who had stated that while he was at his shop, his sister (PW 4) came running and disclosed that Krishnadeo Lal @ Krishna is running away with her daughter. He came to the house and had seen Krishnadeo Lal @ Krishna running away with the child. Villagers assembled, chased and apprehended Krishnadeo Lal @ Krishna who had left the girl in a field, prior to his apprehension. Then thereafter, he was taken to the house of Mukhiya who informed the police. After arrival of the police, the appellant was produced. During cross-examination at para-4, there happens to be contradiction. At para-7, he had stated that the distance in between his house and the house of accused is of only two minutes. However, he



happens to be unable to disclose the distance. In para-8, he had stated that after arrival of the police, the place where the accused had left the child was shown to the I.O.. In para-9, he has stated that there was no injury over the person of child but was unconscious. However, she was not shown to the doctor.

16. PW-6 is the father who had stated that on the alleged date and time of occurrence, while his daughter was cooking, Krishnadeo Lal @ Krishna entered inside his courtyard after opening the gate. Rinku understood to be her elder brother over which she called, “Bhaiya” but getting no response, she came out from the house and then saw Krishnadeo Lal @ Krishna running away with the child who happens to be the daughter of Rinku. She had identified in the electric light over which she raised alarm. Villagers rushed. During course thereof, Krishnadeo Lal @ Krishna left the child in a maize field and then ran away whereupon villagers caught hold him and took him to the place of Mukhia where he was brutally assaulted and handed over to the police. During cross-examination at para-3, there happens to be contradiction. In para-7, he had admitted that on the alleged date and time of occurrence, he was not present at the house. He came one hour after the occurrence. In para-10, he has stated that police took custody of the accused in the same night. They had not gone to the police station. Again corrected himself by saying that on



the following day, police came and so many persons accompanied the police.

17. From the evidences of PWs, 4, 5, 6 coupled with that of PW-8, it is crystal clear that some sort of lapses either happens to be at the end of PW-8, the I.O. during course of investigation or exaggeration in the evidence of PWs-4, 5 and 6.

18. The first and foremost question happens to be with regard to identification of the accused. No source of identification has been disclosed save and except from the evidence of PW-6 who had claimed identification in the electric bulb light, however, is not at all found supported with the objective finding of the I.O. and in likewise manner by PW-4 as well as PW-5. Furthermore, as stated above, the I.O. had failed to inspect the actual place fromwhere the alleged victim was lifted as well as the place, the means to say, the maize field where the victim was thrown away. Furthermore, the place where the accused was apprehended has also not been seen by the Investigating Officer. The aforesaid event has got relevance in the background of the evidence of PW-5 who had clearly stated that only two minutes' time will be sufficient to arrive to the house of the accused from his house. Apart from this, there happens to be inconsistency amongst the evidence of the PWs as PW-4, the informant had not disclosed that PW-5, her brother was at his shop



where she had gone to inform him regarding occurrence, contrary to it, PW-5 had stated that while he was at his shop, PW-4, the informant came to him and disclosed regarding occurrence. Then thereafter, he came to his house where he saw accused running away with the alleged victim. No distance has been disclosed by the prosecution in between house as well as shop. Had there been proper conduct at the end of the prosecution the distance should have been disclosed which, certainly would have enable the prosecution to see the accused running away with the child and in likewise manner, his apprehension. Furthermore, aforesaid shop has not been traced out by the Investigating Officer, PW-8 during course of inspection of the place of occurrence.

19. In the aforesaid facts and circumstances, the lifting of the girl and further leaving her in the maize field is found under suspicion whereupon, the prosecution case could not be considered to be duly substantiated. Apart from this, as stated above, the identification of the accused on account of absence of source of identification is also found doubtful coupled with the fact that none had stated that when they had apprehended the accused he was along with victim. In likewise manner, neither PW-4 nor PW-5 had stated that victim was lifted by them from maize field that too, in continuation of chase, or after apprehension of the accused. Moreover,



the apprehension of the accused and having been carried to the house of Mukhiya along his further detention, arrival of police and taking custody thereof, is also found inconsistent amongst the evidence of the PWs along with non examination of Mukhiya made the situation more clumsy.

20. The cumulative effect nullifies the finding arrived at by the learned trial court, consequent thereupon, the same is set aside. The appeal is allowed.

21. Since appellant is on bail, he is discharged from the liability of the bail bond.

(Aditya Kumar Trivedi, J)

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AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	08.04.2017
Transmission Date	08.04.2017

