

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.66 of 2013

Arising Out of PS.Case No. -110 Year- 1991 Thana -null District- SAMASTIPUR

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Uma Rai, son of Late Kedar Rai, resident of Village - Chandpur Dhamoun, P.S.
Patori, District - Samastipur

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant/s : Mr. Vikramdeo Singh with Satya Ranjan Sinha, Advocates

For the Respondent/s : Mr. Bipin Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

CAV JUDGMENT

Date: 30-03-2017

This appeal is directed against the judgment and order dated 4th January, 2013 passed by Sri Arun Kumar Sharma, 4th Additional Sessions Judge, Samastipur in Sessions Trial No. 403/1999/160/2012, arising out of Patory P.S.Case No. 110 of 1991, G.R.No. 1392 of 1991, by which the learned Judge has convicted the appellant under Sections 364, 365 and 384 of the Indian Penal Code and sentenced him to undergo R.I. for eight years and also with a fine of Rs.5000/- for offence under Section 364 IPC, R.I. for five years with a fine of Rs.2000/- for the offence under Section 365 IPC and R.I. for two years for the offence under Section 384 IPC and in default of payment of fine, it was further directed to undergo simple imprisonment for six months. It was also directed that the sentences



were to run concurrently.

The prosecution case, in short, is that a written report was filed in Patory Police Station, on the basis of which Patory P.S. Case No. 110 of 1991 was instituted under Sections 364 and 365 IPC against 7-8 unknown persons. As per written report filed by one Om Prakash Sah, it transpires that in the night of 14.11.1991 at about 9 hours his villager Uma Rai (appellant) came and stated that 7-8 persons armed with illegal arms had carried away his brother Ashok Kumar Sah (P.W.4) towards south by the side of river Ganges. Further prosecution case is that Uma Rai (appellant) further told that culprits had also carried him for some distance but thereafter thrown him by assaulting with butt. It is alleged in the FIR that due to enmity someone has kidnapped his brother either to commit his murder or to demand ransom.

On the basis of the aforesaid written report, Patory P.S. Case No. 110 of 1991 was registered and the police after investigation submitted charge-sheet against the appellant under Sections 364, 365 and 387 IPC as well as against one Rajeshwari Rai. However, it appears from the judgment that Rajeshwari Rai later on absconded at the time of commitment of the case, as such, only the case of the appellant Uma Rai was committed to the court of sessions, which was later on transferred to various courts and ultimately by the



court of Sri Arun Kumar Sharma, 4th Additional Sessions Judge, Samastipur the case has been tried and judgment of conviction and sentence as aforesaid has been passed.

Against the aforesaid judgment and order, the present appeal has been filed on behalf of the sole appellant.

The main argument of learned counsel for the appellant is that appellant has falsely been implicated in this case due to earlier dispute with respect to election. It has also been submitted that in this case, evidence of P.W.4 itself shows that he is the victim and is only eye-witness of the occurrence. He has stated that he was kidnapped for ransom and there is nothing to show that kidnapping of victim Ashok Kumar Sah, P.W.4, was made with an intention to murder him, as such, no case is made out under Section 364 IPC. It has been further submitted on behalf of appellant that so far conviction under Section 384 and 365 IPC is concerned, the present case is wholly based on the evidence of P.W.4 and there is no other witness in this case and as the appellant has come with a case that there was enmity between the parties from before with respect to election dispute conviction of the appellant on the basis of sole witness cannot be sustained in eye of law. It has been further submitted that even the evidence of P.W.4 is also not free from doubt as the informant (P.W.6) has stated in his cross examination in paragraph-2 that when



his brother Ashok returned, he had not named any kidnappers, hence the evidence of P.W.4 as well as the statement of P.W.4 under Section 164 Cr.P.C. appears to be doubtful and no reliance can be placed on that.

On the other hand, learned APP has submitted that the victim boy (P.W.4) has himself taken the name of the appellant and his evidence has been corroborated by the statement under Section 164 Cr.P.C. made before the Magistrate. No doubt, P.W.3 is though a hearsay witness but he has also supported the case of the prosecution and evidence of I.O. also shows complicity of the appellant in this case and there is nothing available in their cross examination to doubt their evidence, hence there is consistent and reliable evidence available on the record.

Now in the background of the facts, let me discuss the evidence available on the record.

In this case, altogether six witnesses have been examined on behalf of prosecution and they are Raj Kumar Sah (P.W.1), who is a formal witness and has proved the formal FIR (Ext.1), Abdul Qayum (P.W.2), who is also a formal witness and has proved the endorsement on the written report of the informant Om Prakash Sah, on the basis of which Patory P.S. Case No. 110 of 1991 was instituted. P.W.3 is Luxmi Narayan Sah, brother of the informant, P.W.4, Ashok



Kumar Sah is the victim himself, P.W.5 is Binda Paswan, the then A.S.I. of Patory Police Station, who is the second Investigating Officer of the case and P.W.6 is the informant in this case who has proved the written report as Ext.4.

Apart from the aforesaid oral evidences some documents have also been brought on the record as admitted into evidence. They are Ext.1, formal FIR, Ext.2, endorsement of the ASI on formal FIR, on the basis of which case has been instituted, Ext.3, the Case Diary from paragraphs 3 to 58 written by one Sri A.S.Singh, Ext.4, the Fardbeyan and Ext.5 is the statement of the victim, Ashok Kumar Sah under Section 164 Cr.P.C.

On behalf of the defence also two witnesses have been examined and they are D.W.1 Ram Bihari Singh, who has proved Ext.A, i.e. discharge slip and D.W.2 is Kameshwar Rai.

Let me consider now the prosecution evidences. Prosecution has come with a case as per FIR that Uma Rai (appellant) came and informed the informant that 6 to 8 persons have taken away P.W.4. Uma Rai had also stated that after assaulting him, he was left and they carried away the victim, P.W.4 Ashok Kumar Sah. Informant, P.W.6 in his evidence in chief has fully supported the aforesaid prosecution case and he has further stated that P.W.4 Ashok Kumar Sah returned on 8.12.1991 and he told that he had gone for



having tea with appellant Uma Rai and he did not identify any other person. No doubt, in his cross examination P.W.6 had stated that his brother Ashok Kumar Sah had told that he did not identify the culprits. On the other hand, there is evidence of Ashok Kumar Sah (P.W.4) in this case and he has stated in his examination in chief that he had gone with Uma Rai (appellant) to his house and Uma told him to stay there and after 10 minutes, he came along with 6-7 persons armed with gun and pistol and they caught hold of him and Uma Rai had taken him away and they told that they will demand for Rs.50,000/- from his brother for releasing him. His evidence also shows that he was taken on a boat in river and Uma Rai had come on 15th in Jungle where he was kept and told if Rs.50,000/- be not given he had to face consequence and he was released after 26 days near Hasanpur. His evidence in chief also shows that due to pressure of police he was released. From his cross examination, it appears that suggestion has been given to him that police had sealed Bulgani Chowk, police patrolling was going on in Mohiuddin Nagar and also about his family members supported Kishori Rai in the election of Mukhiya in which the brother of Uma Rai, Binda Rai was also contesting the election but this witness has denied to have any knowledge about the same. On careful consideration of the evidence of victim himself, there appears nothing in his evidence to doubt his



credibility rather it appears that his evidence fully harmonizes his statement recorded under Section 164 Cr.P.C. In his statement under section 164 Cr.P.C. he has named the appellant as being instrumental in kidnapping. P.W.3 is the brother of the victim and he has also stated that Uma Rai came and took away his brother on the plea of having tea. He has further supported the prosecution case as stated in the written report and disclosed that his brother has told that he was kept in the gang of which Uma Rai was also present. This witness has also been cross examined but there is nothing in it to make him unreliable. P.W.5 is the I.O. in this case. He has stated that he took up investigation from S.I. B.K.Singh. He arrested the co-accused Rajeshwar Rai as also the appellant. He got the statement of victim recorded under section 164 Cr.P.C. and after concluding investigation submitted charge-sheet. This witness has stated in cross examination that he recorded the statement of accused-appellant and he had admitted his involvement in the occurrence.

From the discussions made above, the occurrence of abduction as alleged appears to be well established. Testimony of P.W.4, i.e., victim himself is free from any doubt and he appears to be truly speaking. So far complicity of the appellant is concerned, victim has named the appellant in his evidence and there is nothing in his testimony to disbelieve him.



Defence has also examined two witnesses in this case. So far D.W.1 is concerned, he has proved the discharge slip of the appellant to show that he was a former army man. There is nothing in his evidence to doubt the complicity of appellant with the commission of crime. D.W.2 has deposed that about 20 years ago there was election of Mukhiya in which his father was a candidate. Kishori Rai and Sone Lal Rai were also the candidates. Appellant Uma Rai was in support of his father and prosecution party was in support of Kishori Rai and they exercised pressure to his father to leave his candidature. After election, Teju sao, Laxmi Sao and others filed false cases against many persons. He further deposed that on 14.11.91, the Hajipur and Samastipur border was sealed by the police due to police encounter in Bhivra village. This witness being a man of accused side is an interested witness.

In this case, appellant has been convicted under Section 364 IPC and Section 364 IPC provides that whoever kidnaps or abducts any person in order that such person may be murdered or may be so disposed of as to be put in danger of being murdered, shall be punished with imprisonment for life, or rigorous imprisonment for a term which may extent to ten years, and shall also be liable to fine. In order to prove the case under Section 364 the prosecution has to prove that some was kidnapped/abducted and kidnapping or abduction was



made in order that he may be murdered or may be so disposed of as to be put in danger of being murdered. In the present case, prosecution case is that P.W.4 was kidnapped with an intention either for ransom or for murder. Only a suspicion has been raised in the FIR., whereas P.W.4, who is the victim, has categorically stated that accused persons were demanding Rs.50,000/- for releasing him and in the whole evidence of P.W.4 or in his statement under Section 164 Cr.P.C., there is nothing to show that appellant or any other accused person had any intention to kill him. Even P.W.3 and 6 who are brothers of the P.W.4 have not stated so in their evidence in court.

Considering the discussions made above, it appears that conviction of appellant under Section 364 IPC is not sustainable in law.

So far conviction of appellant under Section 365 IPC is concerned, Section 365 IPC provides that whoever kidnaps or abducts any person with intent to cause that person to be secretly and wrongfully confined, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine. The victim, P.W.4, has categorically stated that he was kidnapped by the appellant and other accused persons by calling him on the pretext of having tea and that this evidence appears to be fully reliable and convincible. Both P.Ws.3 and 6 have also



corroborated that version that he was taken away by appellant for having tea and thereafter he was kidnapped.

Considering the discussions made above, so far as conviction of appellant under Section 365 IPC is concerned, there are cogent and reliable evidence available on the record.

The appellant has also been convicted under Section 384 IPC. Section 384 IPC provides that whoever commits extortion shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both and extortion has been defined in Section 383 IPC In the present case, there is evidence that appellant and other accused persons were demanding Rs.50,000/- for his release and for that demand, he was put in fear of injury and secretly confined. But there is no evidence to suggest that any amount was paid or any one including victim ever consented to pay the money. From the evidences available on the record, no offence is made out under Section 384 IPC, rather the offence under Section 385 IPC appears to be well attracted which is the minor offence of Section 384 IPC.

In the light of premises discussed above, the conviction of appellant under Section 365 IPC is just and proper. So far as conviction under Section 384 IPC is concerned, that cannot be sustained and in the light of facts and evidences available on the



record, it is converted into Section 385 IPC which is the minor offence of Section 384 IPC. As discussed above, conviction of appellant is also not maintainable in the eye of law.

In this case, appellant has been sentenced to undergo R.I. for eight years under Section 364 IPC and further fine of Rs.5000/-. However, as I have come to the conclusion that prosecution has failed to prove its case under Section 364 IPC, as such, conviction and sentence of the appellant under Section 364 IPC is set aside. So far conviction under Section 365 is concerned, the appellant has been sentenced to undergo R.I. for five years under Section 365 IPC and also a fine of Rs.2000/- and further directed that in default to pay the fine he has to undergo S.I. for six months. He had further been sentenced R.I. for two years under Section 384 IPC and all the sentences were directed to run concurrently.

It appears that the age of the appellant was of 65 years at the time of conviction, i.e. 4.1.2013 and presently he will be of nearly 70 years. It further appears on perusal of the record that during pendency of appeal, the appellant has remained in custody for about four years three months and during trial he has remained in custody for more than three months, as such he has already undergone the period of more than four years six months in custody. Considering the above fact as also the age of the appellant, conviction of appellant



under Section 365 IPC is upheld with modification of sentence to the period already undergone. However, the imposition of fine shall remain. Under the situation, there appears no need to prescribe separate sentence for the offence under Section 385 IPC. Further he has to deposit the fine within a period of four weeks from the receipt of the judgment.

Accordingly, this appeal is dismissed with the aforesaid modification in the conviction and sentence to the extent indicated above.

(Vinod Kumar Sinha, J)

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