

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.28 of 2015

Arising Out of PS. Case No. -60 Year- 1999 Thana -KURSELA District- KATIHAR

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AWDHESH MANDAL SON OF BILCHU MANDAL RESIDENT OF VILLAGE-
MALINIYA, P.S. - KURSELA, DISTRICT - KATIHAR.

.... APPELLANT/S

VERSUS

1. THE STATE OF BIHAR.
2. THE SUPERINTENDENT OF CENTRAL JAIL, PURNEA.

.... RESPONDENT/S

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Appearance:

For the Appellant/s : Mr. Mukesh Kumar Jha, Adv.

For the Respondent/s : Mr. Sujit Kumar Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 31-07-2017

Sole appellant, Awdhesh Mandal has been found guilty for an offence punishable under Section 364 of the IPC vide judgment of conviction dated 09.12.2014 and sentenced to undergo R.I. for six years as well as to pay fine of Rs.500/- and in default of payment of fine, to undergo S.I. for a month, additionally with a further direction of set off against the period having undergone during course of trial in terms of Section 428 of the Cr.P.C. vide judgment of sentence dated 11.12.2014 by the Additional Sessions Judge, IIrd, Katihar in Sessions Trial No.70 of 2014.

2. PW.1, Kailash Pati Mahto gave his fardbeyan on 06.09.1999 at about 10:00 AM at village-Tinghariya before the Officer-in-charge, Kurshaila P.S. disclosing therein that on 05.09.1999 at about 08:00 PM he along with his son Saurav Kumar and co-villager Saryu Mahaldar, Shivjee Mahaldar and Shankar



Mandal proceeded from Kushaila to their village Majidiya. They were proceeding ahead while he was few step behind. At about 08:30 PM when they reached over culvert near graveyard, all on a sudden five persons encircled him who, on the pretext of pistol caught hold him. He flashed his torch and identified some of the culprits as Awadhesh Mandal, Mahesh Mahto, Dinesh Mahto of village-Majadiya while two were unknown. When they began to drag, he raised alarm whereupon the persons who were proceeding ahead, moved aback came near him over which, the miscreants aimed and threatened that in case of any kind of activity at their end they will be murdered. Thereafter, they dragged him away. He resisted over which, the miscreants tied his hand, ear, mouth, eye and then, after covering some distance, took over boat. After sailing some distance they opened their mouth. Hands were also freed. Then the miscreants sailed the boat up to Gobrahi Diyara where miscreants on the pretext of firearm threatened him that either to pay the ransom otherwise, he will be murdered. They were also saying that any how, you have to bring money. Till then, it was morning. Police arrived seeing whom, the miscreants escaped therefrom leaving him. With the timely intervention of the police he was rescued. It has also been stated that subsequently, after arrival of the police, he has given his fardbeyan.

3. The aforesaid fardbeyan was sent to Kushaila P.S. for registration and investigation. On the basis of which, Kushaila P.S. Case No.7 of 1999 was registered. After completing the same, charge



sheet was submitted against all the FIR named accused under Section 364/34 of the IPC out of whom, appellant happens to be under custody while two others namely Mahesh Mahto as well as Dinesh Mahto are still running away. Being the case exclusively triable by the court of Session, the case was committed. Charge under Section 364A/34 of the IPC was framed against the appellant however, after conclusion of the trial by the order impugned appellant has been convicted and sentenced for an offence under Section 364/34 of the IPC, subject matter of instant appeal.

4. The defence case as is evident from mode of cross-examination as well as statement recorded under Section 313 of the Cr.P.C. is that of complete denial. However, neither any DW nor any documentary evidence has been adduced on behalf of appellant.

5. In order to substantiate its case, prosecution had examined altogether nine PWs out of whom PW.1 is Kailash Pati Mahto (Informant), PW.2 is Saurabh Kumar, PW.3 is Shankar Mandal, PW.4 is Saryug Mahaldar, PW.5 is Shiv Mahaldar, PW.6 is Shekhar Singh, PW.7 is Chedi Muni, PW.8 is Bhola Mandal, PW.9 is Ramnandan Paswan as well as had also exhibited Ext.1-Signature of informant, Ext.2-Signature of Officer-in-charge, Ext.3-Fardbyean, Ext.4-Formal FIR.

6. From the record, it is evident that PW.3, PW.4 and PW.5 have supported the case of the prosecution regarding



kidnapping of PW.1, the informant but they have not identified the appellant including others as a culprit. PW.6 is formal in nature. So, the prosecution now rest upon the evidence of PW.1, the victim, PW.2, his son, PW.7, PW.8. PW.9 is the Investigating Officer.

7. PW.2, PW.7, PW.8 are the witnesses who have claimed to have seen the appellant along with two others namely Mahesh and Dinesh along with others who succeeded in kidnapping of PW.1, Kailashpati on the pretext of firearm, however failed to corroborate over subsequent event, as they ran away from the place in order to save their life.

8. Now coming to the evidence of PW.1, victim it is evident that though he had corroborated his earlier version with regard to his kidnapping by the appellant along with Mahesh, Dinesh and others but, he had not spoken a word regarding demand of ransom rather he had stated that for the purpose of ransom he was kidnapped. Perceiving the aforesaid deficiency, the learned lower court had not found the prosecution case proved relating to Section 369A of the IPC, instant thereof, recorded conviction and sentence for Section 364 of the IPC.

9. The learned counsel for the appellant has submitted that no offence under Section 364 of the IPC is made out because of presence of so many flaws in the prosecution case which falsify the occurrence. In order to buttress such plea, it has been submitted that



had there been an intention to commit murder of the informant /victim or was to be secretly confined in such manner which could ultimately resultant in death of the victim is not at all found plausible as, the victim himself disclosed that after coming over boat the accused persons opened his eyes, hands. Furthermore, there happens to be no whisper at his end that during intervening period any attempt was made on behalf of appellant and others to coerce the victim on the pretext of firearm, any kind of threatening was there to do away his life, on the other hand there happens to be specific disclosure that seeing the police at the other side of Diyara, the miscreant left the victim without causing any kind of harm to him. So, the event of kidnapping is not all found duly substantiated.

10. It has also been submitted that PW.9, Investigating Officer had not supported the aforesaid version of the victim claiming himself to be one of the police officials running to rescue the victim nor during course of investigation those police officials were identified whether they happens to be of Kursaila police station or some other police station and whose examination, is also not been during course of trial. Therefore, the aforesaid story is nothing but fantasy, at the end of victim only to give severity over the allegation. So submitted that considering the totality of the event, no offence of kidnapping is made out and the reason for the aforesaid eventuality is with regard to pendency of land dispute amongst them. That being so,



appellant is entitled for acquittal.

11. On the other hand, the learned Additional Public Prosecutor opposed the submission and submitted that so far kidnapping is concerned, there happens to be consistent prosecution evidence. So far non-examination of police officials are concerned that could be mere a irregularity nor an illegality having adverse impact over the conclusion arrived at the learned lower court.

12. From the evidence, as discussed herein above, it is evident that there happens to be consistency amongst them with regard to apprehension of the victim by the appellant including Mahesh and Dinesh as well as two unknown persons on the pretext of firearm but the source of identification is through torch, regarding which nothing has been said by any of the witness. So far other aspect is concerned, that is not at all found corroborated by any other evidence and further, taking into account the evidence of PW.9, the Investigating Officer remained unresolved as he failed to locate the police officials who have gone to rescue the victim, PW.1. Furthermore, when PW.1 /victim was already in company of police officials then what had prevented him to give his fardbeyan at an earliest, waiting for presence of PW.9 and for that, there happens to be no explanation at his end. There also happens to be silence at the end of prosecution regarding presence of informant at village Tinghariya instead of his own village. Non inspection of P.O. where



informant was left seizure of boat. Furthermore, appearance of PW.7 and PW.8 no where. At least villagers of Tinghariya would have been examined to say that in the morning police had come along with victim, PW.1 who was rescued from criminal clutches. Aforesaid deficiencies cast a doubt over version of prosecution, really PW.1 was kidnapped. The cumulative effect of aforesaid lapses did not justify the conviction having recorded against the appellant under Section 364 of the IPC. That being so, is set aside. Appeal is allowed. From the report submitted by the learned lower court, it is evident that after saturation of sentence, appellant is under custody relating to other cases whereupon, no order is needed on that very score.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

AFR/NAFR	A.F.R.
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