

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.490 of 2011

Against the judgment of conviction and order of sentence dated 27.04.2011 and 29.04.2011 respectively passed by Shri Om Prakash-IV, the Additional Sessions Judge, Fast Track Court No.4, Khagaria in Sessions Case No.284 of 2000/Trial No.615 of 2009, arising out of Khagaria P.S. Case No.314 of 1999.

1. Bhikhan Yadav, Son of Brahmdeo Yadav.
2. Sikandar Yadav, Son of Brahmdeo Yadav.
Both residents of Village Chhoti Rani Sakarpura, P.S. Gangaur, District Khagaria
3. Sikandar Yadav, Son of Poshan Yadav, Resident of Village Morkahi, P.S. Alauli, District Khagaria

.... Appellants

Versus

The State of Bihar

.... Respondent

Appearance :

For the Appellant	:	Md. Naseem Mukhtar, Advocate
		Mr. Phulan Yadav, Advocate
For the State	:	Mr. A.K. Sinha, APP

CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH
and
HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH)

Date: 15-03-2017

All the three appellants have been convicted and sentenced to imprisonment for life under Sections 364(A)/34 of the Indian Penal Code along with fine of Rs.5,000/- each and in default to undergo further simple imprisonment for three months by the learned Additional Sessions Judge-cum-Fast Track Court No.4, Khagaria in Sessions Case No.284 of 2000/Trial No.615 of 2009, arising out of Khagaria P.S. Case No.314 of 1999.

2. The prosecution case, as made out in the written report of



one Bharat Prasad Singh, Assistant Sub-Inspector of Police, Gangaur O.P., Village Bela Simri, addressed to In-charge, Gangaur O.P. in short, is as follows:

The informant (Bharat Prasad Singh, A.S.I.) stated that on 30.07.1999, he got a secret information that 5-6 unknown accused persons have kidnapped two small boys from Delhi and have kept them in the house of Bhikhan Yadav, son of Brahmdeo Yadav, resident of Chhoti Rani Sakarpura, P.S. Khagaria. The informant further learnt that the accused persons have congregated in the house of Bhikhan Yadav and were talking of getting a ransom of Rs.2,00,000/- in lieu of return of the boys. On receipt of the information, the informant formed a raiding party and started for the house of Bhikhan Yadav in Chhoti Rani Sakarpura. On the way the informant picked up two independent witnesses, namely, Ashok Kumar and Dhodho Thakur, both residents of village Gangaur, P.S. Khagaria. In presence of these two witnesses, the informant raided the house of Bhikhan Yadav. The informant recovered two small children and arrested four accused persons from the premises. Three of the accused persons succeeded in fleeing away taking advantage of the cover of darkness. On query, the children disclosed their names as Sonu Kumar and Arvind Kumar, both sons of Kaushal Thakur, resident of Dalupura, Delhi. The apprehended persons disclosed their names as Sikandar Yadav, son of Poshan Yadav, Village Morkahi, P.S. Alauli, Ram Nandan Thakur, son of Jamun Thakur, Village Raub, P.S. Alauli,



Sikandar Yadav and Bhikhan Yadav, both sons of Brahmdeo Yadav and residents of Village Chhoti Rani Sakarpura, District Khagaria. On further query, the apprehended persons disclosed the name of their associates who had fled as Pappu Yadav, son of Lalo Yadav, resident of Village Chhoti Rani Sakarpura, Yogendra Mochi and Parmeshwar Mochi, both residents of Village Rattan, P.S. Bakhri, District Begusarai.

3. On the basis of fardbeyan of Bharat Prasad Singh, ASI, Khagaria P.S. Case No.314 of 1999, dated 30.07.1999, was instituted, under Sections 364(A)/34 Indian Penal Code. The police in course of investigation recorded the statement of two apprehended persons, namely, Ram Nandan Thakur and Sikandar Yadav, son of Poshan Yadav under Section 164 Cr.P.C. The police also recorded the statement of Sonu Kumar and Arvind Kumar, the kidnapped children under Section 164 Cr.P.C. Finding sufficient materials, the police submitted charge-sheet under Sections 364(A)/34 of the Indian Penal Code against Bhikhan Yadav, Sikandar Yadav, both sons of Brahmdeo Yadav, Sikandar Yadav, son of Poshan Yadav and Ram Nandan Thakur while keeping the investigation pending against the absconding accused, namely, Pappu Yadav, Yogendra Mochi and Parmeshwar Mochi.

4. On the basis of charge sheet, the learned Magistrate took cognizance of the offence and committed the case of the four accused persons to the court of sessions for trial and disposal.

5. Appellant Ram Nandan Thakur had claimed himself to be



a juvenile and his case was separated and forwarded to the Juvenile Justice Board for enquiry.

6. On commitment of the case, charges were framed under Sections 364(A)/34 of the Indian Penal Code against the remaining three accused persons, namely, Bhikhan Yadav, Sikandar Yadav, both sons of Brahmdeo Yadav and Sikandar Yadav, son of Poshan Yadav to which they pleaded not guilty and claimed to be tried.

7. The case of the defence, in short, is total denial of the involvement in the case. They examined one witness, namely, Jamun Thakur in support of juvenility of Ram Nandan Thakur whose case was ultimately separated from the rest of the accused. The trial court relying upon the evidence of the prosecution witnesses, convicted the appellants under Section 364(A)/34 of the Indian Penal Code. The prosecution in support of its case has examined four witnesses, namely, Ram Naresh Yadav, PW1, Aftab Alam, PW2, Angad Singh, PW3 and Ramanand Pandit, PW4. Out of these four witnesses, PWs.1, 2 and 3 were members of the raiding party, which raided the house of appellant Bhikhan Yadav along with the informant Bharat Prasad Singh (not examined). All these three witnesses stated that on receipt of secret information that two kidnapped boys are being kept in the house of Bhikhan Yadav, the informant formed a raiding team and in presence of two independent witnesses raided the house of Bhikhan Yadav and recovered two boys from the house of Bhikhan Yadav and also succeeded in arresting four



accused, namely, Bhikhan Yadav, Sikandar Yadav, both sons of Brahmdeo Yadav and Sikandar Yadav, son of Poshan Yadav and Ram Nandan Thakur, son of Jamun Thakur. Ramanand Pandit (PW4) is a local villager and a hearsay witness. He stated that he learnt that two boys have been kidnapped and are confined in the house of Bhikhan Yadav where the accused persons have also congregated. On these premises, the prosecution has tried to sustain the charge under Section 364(A)/34 of the Indian Penal Code against the accused persons.

8. Learned counsel appearing on behalf of the defence has assailed the impugned judgment on a number of grounds. He submits that this is a case of no evidence; neither the informant has been examined nor the First Information Report has been exhibited. Again neither the father of the victims nor the victims have been examined in the court. No recovery memo has been produced on record. Learned counsel further submits that even assuming the entire prosecution case to be true, the maximum inference would be that two boys were found in the house of Bhikhan Yadav. The statements under Section 164 Cr.P.C. is not a substantive evidence and would not have much evidentiary value unless and until the person making the statement under Section 164 Cr.P.C. is also examined during the trial. The confessional statement of the accused would be of no relevance as the same was made before the police. Even the confessional statement of the accused persons have not been produced on record nor exhibited.



9. On the other hand, Mr. A.K. Sinha, learned counsel for the State has supported the judgment of conviction and sentence against the accused persons. He submits that PWs.1, 2 and 3, all have stated that the kidnapped boys were recovered from the house of Bhikhan Yadav from where, his another brother Sikandar Yadav as well as one Sikandar Yadav, son of Poshan Yadav, were also arrested. The boys are resident of Delhi and no explanation has been provided as to under what circumstances they have been recovered from Bakhri block of Begusarai district, which is far-far away from Delhi. All these facts point that the boys have been kidnapped for ransom.

10. We have heard counsel for the parties and perused the materials on record.

11. The issue before this Court is whether the prosecution has been able to establish the charge under Section 364(A)/34 of the Indian Penal Code beyond all reasonable doubt against the accused persons. In order to constitute a case under Section 364(A) of the Indian Penal Code, it is necessary that after abduction and kidnapping, there should be a demand for ransom as well as threatening of causing grievous hurt or death in case the same is not fulfilled. In the instant case, even assuming the prosecution case to be true, there is not even an iota of evidence on the point that any threatening was given to the victim's father for payment of ransom amount in lieu of release of his sons.



12. As one of the most important ingredients for constituting an offence under Section 364(A)/34 of the Indian Penal Code is missing, we are of the considered view that the prosecution has failed to establish the charge under Section 364(A)/34 of the Indian Penal Code. Besides this, we find that the First Information Report has not been exhibited. Neither the victims nor the victim's parents have been examined to substantiate the plea of kidnapping and demand of ransom. Even recovery memo or the confessional statement of the accused on which the prosecution has placed reliance, has not been brought on record. As such, we would agree with the submission of the learned counsel for the appellants that prosecution has not been able to establish the charge of kidnapping with ransom against the appellants beyond all reasonable doubt.

13. As such, we set aside the judgment of conviction dated 27.04.2011 and the order of sentence dated 29.04.2011, passed in Sessions Case No.284 of 2000/Trial No.615 of 2009, arising out of Khagaria P.S. Case No.314 of 1999, by the learned Additional Sessions Judge-cum-Fast Track Court No.4, Khagaria and acquit the appellants of the charges under Section 364(A)/34 of the Indian Penal Code. The appellants are in custody. They are set at liberty, if not wanted in any other case.

14. The appeal is allowed.

15. Before parting with the judgment, we would observe



that three of the accused persons, namely, Pappu Yadav, son of Lalo Yadav, resident of Village Chhoti Rani Sakarpura, Yogendra Mochi and Parmeshwar Mochi, both residents of Village Rattan, P.S. Bakhri, District Begusarai are absconding from the very inception of the case. The police will take all steps to arrest them so that they are too put on trial.

16. Let a copy of this order be forwarded to the Superintendent of Police, Khagaria.

(Samarendra Pratap Singh, J.)

(Arun Kumar, J.)

S.Kumar/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	04.04.2017
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