

IN THE HIGH COURT OF JUDICATURE AT PATNA

Against the judgment of conviction, dated 23.08.2011, and order of sentence, dated 03.09.2011, passed by Shri Satish Chandra Ray, learned Additional Sessions Judge, F.T.C.-II, Bhabhua in Sessions Trial No. 156 of 2010 / 115 of 2010, arising out of Mohania P.S. Case No. 350 of 2009)

Criminal Appeal (DB) No.1040 of 2011

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Rakesh Ram @ Chhotu, Son of Bansh Raj Ram, Resident of Village- Dih Bhujaina,
P.S- Chainpur, Distt- Kaimur (Bhabhua). Appellant

Versus

The State of Bihar

..... Respondent

With

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Criminal Appeal (DB) No. 1064 of 2011

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Ramji Ram @ Pahalwan, Son of Late Sugga Ram, Resident of Village- Sultanpur,
P.S.- Kudra, District- Kaimur (Bhabhua). Appellant

Versus

The State of Bihar

..... Respondent

With

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Criminal Appeal (DB) No. 1080 of 2011

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Kameshwar Ram, Son of Parikha Ram, Resident of Village- Kharhana, P.S.- Kudra,
District- Kaimur (Bhabhua). Appellant

Versus

The State of Bihar

..... Respondent

With

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Criminal Appeal (DB) No. 1102 of 2011

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Suraj Ram, son of Late Tufani Ram, Resident of Village- Kharhana, P.S.- Kudra,
District- Kaimur (Bhabhua). Appellant

Versus

The State of Bihar

..... Respondent

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Appearance :
(In CR. APP (DB) No.1040 of 2011)
For the Appellant/s : Mr. Manan Kumar Mishra, Sr. Advocate
Mr. Vishwajeet Kumar Mishra, Advocate
Mr. Ashutosh Tripathy, Advocate
Mr. Anjani Prasar, Advocate



For the Respondent/s : Mr. Ashwini Kumar Sinha, APP
(In CR. APP (DB) No.1064 of 2011)
For the Appellant/s : Mr. Rajesh Kumar Mishra, Advocate
Mr. Sourendra Pandey, Advocate
For the Respondent/s : Mr. Ashwini Kumar Sinha, APP
(In CR. APP (DB) No.1080 of 2011)
For the Appellant/s : Mr. Rajesh Kumar Mishra, Advocate
Mr. Nalin Vilochan Tiwary, Advocate
For the Respondent/s : Mr. Ashwini Kumar Sinha, APP
(In CR. APP (DB) No.1102 of 2011)
For the Appellant/s : Mr. Arabind Nath Pandey, Advocate
For the Respondent/s : Mr. Ashwini Kumar Sinha, APP

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

And

HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH)

Date: 19-07-2017

All the four appeals have been preferred against the judgment of conviction, dated 23.08.2011, and order of sentence, dated 03.09.2011, passed by learned Additional Sessions Judge, F.T.C.-II, Bhabhua in Sessions Trial No. 156 of 2010 / 115 of 2010, arising out of Mohania P.S. Case No. 350 of 2009, by which all the four appellants have been convicted under Section 364A/34 of the Indian Penal Code and sentenced to undergo imprisonment for life along with a fine of Rs.5000/- each and in default thereof, to undergo imprisonment for one year.

2. The prosecution case, in short, as made out in the written report, dated 08.12.2009, of one Md. Nasim Quaraisi, son of late Md. Sharif Quaraisi,, addressed to Officer-in-charge, Mohania, Police Station, District- Kaimur, is as follows:



(i) The informant stated that his son Md. Shalim Quaraisi, aged 16 years, sells egg in his Thela near Praduman betel shop, just east to Chandani Chowk. Every day he used to carry his thela to that place for selling eggs and used to return roughly around 10 'o' clock in the night. As like other day, on 07.12.2009, he proceeded with his Thela for selling eggs near the shop of Praduman betel shop, however, when his son did not return even by 11.00 P.M. in the night, then he along with his younger son Nehal Quaraisi went to Chandani Chowk to look for him. Though he found the Thela, loaded with eggs, standing at its fixed place, however, his son was nowhere found. Thereafter the informant sent his son Nehal to his house to call his elder brother Sabir Quaraisi, whereafter they went together to look for Md. Salim Quaraisi in the neighbouring areas, but he was not found; then they returned with Thela to their house. In the morning of 08.12.2009 at 6:30 A.M., he went to the betel shop of Praduman and enquired about his son, who informed that the previous evening, i.e. 07.12.2009 at 9:45 P.M., one Marshal Jeep stopped near the Thela of Salim, wherein five persons were sitting. Salim was struggling to free himself from their clutches and was crying for help. However, the people sitting on the Marshal jeep fled towards east carrying Salim with them.

(ii) On the basis of the written report of the informant,



Mohania P.S. Case No. 350 of 2009, dated 08.12.2009, was registered for the offences under Sections 365 of the Indian Penal Code.

3. After lodging the F.I.R., the police started investigation, visited the place of occurrence and took restatement of the informant and statement of other witnesses under Section 161 of Cr.P.C. On a 'tip off' that the informant is going to deliver ransom amount to some persons at Bahuara bridge, the police also proceeded for the said place. The police found three persons on a motorcycle in suspicious condition. Thereafter the police signaled these persons to stop, but tried to escape. However, the police succeeded in arresting them. On enquiry, the accused disclosed their names as Rakesh Ram @ Chhotu, Kameshwar Ram and Suraj Ram @ Tufani. Thereafter confessional statement of Rakesh Ram @ Chhotu was recorded, in which he confessed his guilt and stated that they had kidnapped the victim for ransom and also disclosed that the victim is kept in village Bharigama. The accused Rakesh Ram and others also guided the police to the very house in village Bharigama from where the victim boy was recovered along with Ramjee Ram @ Pahalwan, who was guarding the victim. Some arms and ammunities were also recovered from the said premises. The police also got recorded 161 Cr.P.C. statement of the victim boy, who gave vivid description of his kidnapping by five persons on a Marshal jeep in the night of



07.12.2009, while he was selling eggs. He also stated that the accused persons used his mobile in seeking a sum of Rs.10 lakhs from his father, as ransom. The victim further stated that persons, who were arrested by the police, referred to as Arvind, Mohan, Rajesh Ram, Kedar Ram and Sunil Prasad. The police finding the case to be true against the accused persons submitted charge-sheet under Section 364A/120B Indian Penal Code. The learned Magistrate took cognizance of offence and committed the case to the Court of Sessions for trial. Charges were framed under Sections 364A/34 and 120B of the Indian Penal Code against all the accused persons to which they pleaded not guilty and claimed to be tried.

4. The prosecution, in order to substantiate its case, examined as many as 11 witnesses. P.W. 1 is Praduman Chaurasia, P.W.2 is Raju Chaudhary, P.W.3 is Ghanshyam Ram, P.W.4 is Naseem Quaraisi, P.W. 5 is Md. Salim Quaraisi (victim), P.W.6 is Devendra Narain Singh, P.W.7 is Ram Iqbal Rai, P.W.8 is Duneswar Upadhyay, P.W.9 is Bijendra Kumar Singh, P.W.10 is Akeel Ahmad and P.W.11 is Abhay Kumar. Out of which, P.W.1 Praduman Chaurasia and P.W.3 Ghanshyam Ram have turned hostile and have not supported the prosecution case. P.W.2 Raju Chaudhary is a hearsay witness, who merely stated that he learnt about the kidnapping of the victim Salim Quaraisi. P.W.6 Devendra Narain Singh, P.W. 7 Ram



Eqbal Rai and P.W.8 Duneswar Upadhyay are the members of the raiding party, who arrested three of the accused and also recovered the victim from a house in village Bharigama and arrested one more accused. P.W.9 Bijendra Kumar Singh is the driver of the jeep of the inspecting team. P.W.11 Abhay Kumar is a formal witness.

5. The defence did not examine any witness nor produced any documentary evidence in support of its case. The defence of the appellants in their statement recorded under Section 313 was complete denial of their involvement in the crime.

6. It appears that the trial court convicted the appellants, three of them were arrested while they had come to receive the part of the ransom amount from the informant at Bahuara bridge and one Ramjee Ram @ Pahalwan along with victim was recovered from a house of village Bharigama on the confessional statement of one of the appellant, namely, Rakesh Ram @ Chhotu.

7. The case of the prosecution is primarily based on the statement of the victim Salim Quaraisi and his father Md. Naseem Quaraisi, who is the informant of the case as well as Akeel Ahmad (P.W.10), who is the investigating officer of the case. The trial court also considered the statement of the victim made under Section 164 of the Cr.P.C.

8. P.W.4 Md. Salim Quaraisi, who is the victim and aged



about 16 years at the relevant time, in his evidence supported the prosecution case and stated that on the fateful evening at 9.45 P.M. one Marshal jeep stopped in front of his Thela and one of them sitting in the jeep caught him and asked for money. He stated that he was forcefully dragged inside the jeep and made captive. He further stated that the accused persons used his mobile for demanding money. The accused thereafter took him to different villages and finally he was rescued by the police from village Bharigama. The victim further stated that three arrested accused, namely, Kameshwar, Rakesh @ Chhotu and Suraj were referred to each other by different names, namely, Arvind, Mohan, Rajesh Ram, Kedar Ram and Sunil Prasad.

9. P.W. 4 Md. Naseem Quaraishi too has supported the prosecution case as stated in the F.I.R. He further stated that his son was kidnapped from the shop on 07.12.2009, at about 9.45 P.M. by five persons, who had come from Marshal jeep. He further stated that the accused persons used the mobile of his son and sim for ransom and also threatening him with dire consequence, if the same is not made.

10. Mr. Manan Kumar Mishra, learned senior counsel appearing for appellant Rakesh Ram @ Chhotu, who made the leading argument in the case, stated that even assuming the entire materials to be true, no case under Section 364A of the Indian Penal



Code would be made out. He submits that there is no evidence as to who demanded ransom and to whom it was to be paid. Furthermore, it is an admitted case of the prosecution that no ransom was paid to any person and the call detailed record has not been proved by any authorized person. Furthermore, the recording of the conversation on mobile too has not been proved. He next submits that the house, from where the victim was recovered, was uninhabited. He further submits that though the mobile was seized in presence of two witnesses, namely, Shiv Prasad Ram and Ghanshyam Chaudhary, but none of them have been examined as a witness. He further submits that Test Identification Parade was not conducted in the case, which was essential, as the victim did not recognize the accused persons. Furthermore, the victim came to know of the name of the accused from the police. He further submits that the investigating officer did not recover the Marshal jeep, which was used in kidnapping the victim. Furthermore, no enquiry was made, whether the Bike, which was said to be recovered from the possession of accused persons, actually belonged to them. He also submits that the accused persons were identified by the victim for the first time in the Court, which is weak evidence. In support of his submission, learned counsel has relied upon the decision in case of Kanan and Ors. Vs. State of Kerala, reported in AIR 1979 SC 1127, Deepak Kumar Ghosh @



Deepak Ghosh & Anr. Vs. Smt. Meeta Ghosh, reported in 2005(4) PLJR 14 and in case Ashok Debbarma @ Achak Debbarma Vs. State of Tripura, reported in (2014) 4 SCC 747.

11. On the other hand, Mr. A. K. Sinha, learned counsel appearing for the State has defended the impugned judgment of conviction and order of sentence. He submits that on the confessional statement of accused, the victim boy was recovered from a house in village Bharigama along with one of the co-accused Ramjee Ram @ Pahalwan.

12. We have heard the counsel for the parties. It is well settled that for bringing home the charge under Section 364A of the Indian Penal Code against the accused, the prosecution has to establish that the accused demanded ransom.

13. In the instant case, the maximum evidence that prosecution has brought on record is that ransom of Rs.10 lakhs was demanded from the informant by using the mobile of his son. The informant in his evidence also stated that on the basis of mobile call, he went along with some other persons, where he was called to pay ransom, but no one was found there. We find that the call detailed report of the mobile has not been proved in the court. Furthermore, even the person, who has prepared the CDR has not been examined. There is no evidence as to who in fact has made a call for ransom. The



victim has referred to one Rakesh, Ramjee Ram, Suraj and Kameshwar, as the persons, who used to force him to ask for money from his father for his release.

14. Thus, we find that there is no concrete evidence to establish that these persons kidnapped the victim for ransom. Furthermore, there is no evidence that the informant had in fact gone with money to make payment of ransom from where the accused, namely, Rakesh Kumar @ Chhotu, Kameshwar Ram and Suraj Ram were arrested. The prosecution has also failed to establish that the accused persons demanded ransom in lieu of release of his son. However, we find that on the confessional statement of Rakesh Kumar, which has been marked as Ext.5, the victim was recovered from a house in village Bharigama, along with another accused Ramjee Ram @ Pahalwan. Some arms and ammunitions were also seized from the said premise. The confessional statement generally is not admissible in evidence, but if the confessional statement leads to discovery of a fact, the same would be admissible under Section 27 of the Evidence Act against the person giving the statement. Reliance has been placed in case of State of Karnataka vs David Razario and Anr., reported in (2002) 7 SCC 728. The victim boy was recovered on the confessional statement of Rakesh Kumar @ Chhotu, from a house in village Bharigama and the accused Ramjee Ram @ Pahalwan was



also arrested from the same premises, who was guarding the victim boy. As such, we find that the prosecution has been able to establish the charge under Section 364 of the Indian Penal Code against the appellants, namely, Rakesh Ram @ Chhotu (Cr. Appeal (DB) No.1040 of 2011) and Ramjee Ram @ Pahalwan (Cr. Appeal (DB) No.1064 of 2011). Accordingly, we alter the judgment of conviction under Section 364A to Section 364 Indian Penal Code, for which maximum sentence is 10 years. Since both the appellants have remained in custody for about 8 years, we are of the view that the period already undergone in custody would meet the ends of justice and as such we direct that appellants, namely, Rakesh Ram @ Chhotu and Ramjee Ram @ Pahalwan, to be set at liberty forthwith, if not wanted in any other case.

15. We find that the victim has also not taken the name of two appellants, namely, Kameshwar Ram (Cr. Appeal (DB) No.1080 of 2011) and Suraj Ram (Cr. Appeal (DB) No.1102 of 2011). Furthermore, there is nothing concrete on record including the evidence of investigating officer that both these appellants participated in the crime. As such, we find that the prosecution has not been able to bring home the charge under Section 364 of the Indian Penal Code against the two appellants, namely, Kameshwar Ram and Suraj Ram. As such, we set aside the judgment of conviction and



order of sentence, passed against them by the trial court, and, accordingly, acquit them. As both the appellants are in custody, they are directed to be set at liberty forthwith, if not wanted in any other case.

(Samarendra Pratap Singh, J.)

Uday/-

(Prakash Chandra Jaiswal, J.)

AFR/NAFR	NAFR
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