

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.163 of 2013

Arising Out of PS.Case No. -194 Year- 2010 Thana -LAXMIPUR District- -

Milan Singh S/O Manik Singh Resident of Village Simultala, P.S. Simultala, District Jamui.

.... Appellant

Versus

The State Of Bihar

.... Respondent

With

Criminal Appeal (DB) No. 222 of 2013

Arising Out of PS.Case No. -194 Year- 2010 Thana -LAXMIPUR District- JAMUI

Bhuni Ravidas S/O Late Babu Lal Ravidas Resident of Village- Kankan Chor, P.S.- Lakshmipur, District- Jamui.

.... Appellant

Versus

The State Of Bihar

.... Respondent

Appearance :

(In Cr. Appeal (DB) No.163 of 2013)

For the Appellant : Mr. Nagendra Dubey,
Mr. Vijay Kumar

For the State Mr. S. N. Prasad, APP

(In Cr. Appeal (DB) No.222 of 2013)

For the Appellant : Mr. Pankaj Kumar Sinha
Mr. Kamal Kishore Jha

For the State Mr. Ajay Mishra, APP

CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

And

HONOURABLE MR. JUSTICE SANJAY KUMAR

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL)

Date: 03-03-2017

The appellant Milan Singh of Cr. Appeal No. 163 of 2013 and the appellant Bhuni Ravidas of Cr. Appeal No. 222 of 2013 and one Ajit Kumar (since acquitted) were put on trial in S.T. No. 57 of 2011 of the court of learned Ad hoc Additional District and Sessions Judge-IV, Jamui. They were



charged under section 364-A/34 IPC for having kidnapped the son (Divakar Kumar) of the informant and released the victim only upon payment of ransom. The learned trial court, on appreciation of evidence, produced at the trial, held the appellants guilty of the charge(s) under judgment dated 29.01.2013 and by an order of sentence dated 30.01.2013 both of them were sentenced to undergo S.I. for life along with fine with default clause. Co-accused Ajit Kumar was, however, acquitted.

2. We have heard Mr. Nagendra Dubey and Mr. Pankaj Kumar Sinha in support of Cr. Appeal No. 163 of 2013 and Cr. Appeal No. 222 of 2013, respectively, and the APP for the State.

3. The prosecution case as unfolded at the trial through the written report submitted by P.W.4 Anita Devi (the mother of the victim) on 08.10.2010 at 7.45 A.M. and registered by SHO of Laxmipur police station (P.W.7) who also took up the investigation of the case, in brief, is that in the evening of 07.10.2010 at about 7.00 P.M. while the family members were on the roof, the door was knocked. They heard the voice of P.W.3 who was saying that some people had come to solicit votes whereafter the main door of the house was opened. 5-6 masked culprits came on the roof and took the 14-year-old son (P.W.6) of the informant along with them. Following day and after several ransom calls were received and only upon payment of the ransom amount, the victim boy was released 07 days after his kidnapping. Obviously, no one has been named by the informant in the FIR which was formally drawn on 08.10.2010 (Ext.2). The I.O. (P.W.7) investigated the case and finding the accusations true against the present appellants and one another co accused, submitted the charge-sheet which gave rise to S.T. No. 57 of 2011 of the court of Ad hoc ADJ-IVth, Jamui wherein the charges were framed and read over to the appellants who pleaded their innocence and claimed to be tried.



4. To prove the charges, the prosecution examined P.W. 1 Shiv Kumar Das(father of the victim), P.W.2 Girja Das (grandfather of the victim), P.W.3 Milwa Devi (co-villager), P.W.4 Anita Devi (informant and mother of the victim), P.W. 5 Vinod Kumar (maternal uncle of the victim), P.W.6 Diwakar Kumar (the victim boy) and P.W.7 Sanjay Kumar I.O. of the case. The defence, however, did not lead any evidence. Upon conclusion of the evidence, the statements of the appellants were recorded under section 313 Cr. P.C wherein they again simply abjured their guilt.

5. The counsel(s) appearing in the respective appeals, in the light of the evidence adduced at the trial and the conclusion(s) derived by the learned trial court under the impugned judgment, have fairly stated that the victim boy having been kidnapped on the relevant date and time of occurrence is not seriously disputed. It is also not very much in dispute that the Victim boy was released by the kidnappers after few days of his kidnapping and he returned home. It has been submitted that the complicity of the appellants in the crime is the question to be considered and answered on the basis of the evidence adduced by the prosecution at the trial.

6. Before we examine the evidence adduced by the prosecution, it would be pertinent to note that the gravamen of charge against the appellant Milan Singh is that he was one of the culprits, who, after the kidnapping of the victim boy, was providing food to the victim and was taking service from him whereas the main charge against the appellant Bhuni Ravidas is that on repeated telephonic calls a ransom amount was paid to him by the father of the victim (P.W.1). Subsequently, another instalment in the sum of Rs. one lakh was paid to a person who had concealed his identity and thereafter the kidnapped boy was released from the clutches of the kidnappers.

7. We would examine whether the prosecution has been able to prove



beyond shadow of reasonable doubts the charges against the appellants. As noticed, no one is named in the FIR. P.W. 1 has stated in his deposition that several phone calls were thereafter made to him from one mobile phone demanding ransom. The person calling him disclosed his name as Tantan Mishra. The ransom amount was paid by him in the first case to the appellant Bhuni Ravidas and in the second case to a person in the nearby Jungle who had concealed his identity. Initially they demanded a sum of Rs. five lakh which, on negotiation, was scaled down to Rs. 1.5 lakh. He has deposed that one of the calls was made by the appellant Milan Singh. We, however, do not find from his evidence as to how he could know or identify that the caller was Milan Singh. In paragraph 3 he has stated that he paid Rs. one lakh to the appellant Bhuni Ravidas in presence of his brother-in-law Raj Kumar Das. Raj Kumar Das has not been produced by the prosecution. There is no explanation for the same. His evidence is further that even after the said payment, the victim boy was not released and again a ransom call was made to him in the name of Tantan Mishra that the amount was not received by him and he was threatened with dire consequence. Thereafter, he again arranged one lakh rupees and delivered to a person in the Jungle who had concealed his identity whereafter his son was released. His further evidence is that a couple of weeks after the return of the victim boy he was visiting the Matiya Bazar on the eve of Chhath Puja along with his son when his son (victim) noticed and identified the appellant Milan Singh in the Bazar who used to provide him food and take his service during his captivity. He immediately rang the police and the officer-in-charge rushed in and on proper identification arrested the appellant Milan Singh from the Bazar. In order to find the reliability of such identification of the appellant we turn to the evidence of P.W.6 (victim). It is found that in his examination-in-chief he has stated that five unknown accused



after kidnapping took him to the Jungle where he was kept in the captivity for seven days. He, however, did not identify any of them. He did not identify the appellant in court. In his cross-examination, this witness has clearly stated that in course of his captivity who took him where has not been identified by him. He has thus shown his inability in identifying any person who might have played some role in holding the victim boy hostage during those seven days. There is another aspect of the matter which has appeared distinctly in course of trial. The appellant neither put up any obstruction nor made any attempt to escape from the place when he was being arrested by the police at the Bazar. No one from the Bazar has been produced by the prosecution to show that the appellant was arrested at the Bazar on the identification of P.W.6 who himself has shown his inability to identify any of the accuseds in course of his captivity. The implication of the appellant Milan Singh on the basis of such identification by the victim boy becomes doubtful. The charge against him has not been proved beyond reasonable doubts.

8. Coming to the case of the appellant Bhuni Ravidas, it is found that he was paid the first instalment of Rs. one lakh by the father of the victim (P.W.1) in presence of his brother-in-law namely Raj Kumar Das. Raj Kumar Das has not taken the dock to support the case. P.W. 1 has stated that another call was received demanding the ransom as the amount paid by him to this appellant has not reached the hands of the captivators. He arranged the money in which his father (P.W.2) also contributed by drawing amount from the bank. We perused the evidence of P.W.2. In his examination-in-chief he has stated that 15-20 accused persons on the relevant date arrived at his house and he was pushed down and some of them entered into the house and kidnapped his grandson and took him away and only after payment of the ransom amount of Rs. 1.5 lakh he was released. He has not stated about the ransom amount paid



by his son (P.W.1) to the appellant Bhuni Ravidas. The informant (P.W.1) at para 25 has stated that his father (P.W.2) had withdrawn an amount of Rs. 90,000/- from a Bank and out of this he had given him Rs. 50,000/- and balance amount Rs. one lakh was borrowed from some of his relatives. But his father P.W.2 at para 4 has said that he had no knowledge as to how the informant arranged the money or from where he borrowed. We have carefully perused his entire evidence. It does not appear therefrom that his son (P.W.1) had ever disclosed to him that he had earlier paid Rs. one lakh to the appellant Bhuni Ravidas. After his release, the kidnapped boy disclosed to him that he could not identify any of the culprits. He has not identified any accused including the appellant Bhuni Ravidas present in court. We would now revert to the evidence of P.W.1 (father of the victim). In paragraph 24 of his cross-examination, it has been stated that his son did not disclose the name of Bhuni Ravidas. He had paid Rs. 1.5 lakh as ransom to a person in the Jungle whom he did not identify. If we believe his deposition in paragraph 3 wherein he stated that the deal was struck at Rs. 1.5 lakh only then as per paragraph 24 of his deposition the same was paid to an unidentified person in Jungle. The first payment of Rs. one lakh by him to the appellant Bhuni Ravidas becomes very much suspicious and doubtful. If such payment was made to the appellant Bhuni Ravidas in presence of his brother-in-law (**Sarhu**), the prosecution could have examined him. It was also expected to disclose the name of this appellant to his father. We can safely presume that the evidence of Raj Kumar Das (brother-in-law of P.W.1) was purposely withheld by the prosecution. We do not find any other evidence to support the said case of the prosecution that initially a ransom amount was paid to the appellant Bhuni Ravidas. In the light of the evidence which have distinctly appeared through the evidence of the prosecution, in our view, the said allegation levelled against the appellant



Bhuni Ravidas has not been proved by the prosecution beyond shadow of reasonable doubts. On these scanty/insufficient evidence(s) reflecting from the record, we do not find it safe to sustain the conviction of the appellant Bhuni Ravidas for having received the ransom amount or part thereof from P.W.1 which ultimately resulted in release of the victim(P.W.6) from the captivity of the kidnappers.

9. In the light of the discussions made hereinabove, we are of the considered opinion that the impugned judgment of conviction recorded against the appellants is fit to be set aside as the prosecution has failed to prove the charge(s) against both the appellants. They are entitled to benefit of doubt.

10. Both the appeals are allowed. The judgment of conviction dated 29.01.2013 recorded against them as well as the order of sentence dated 30.01.2013 passed by the learned trial court in S. T. No. 57 of 2011 are set aside. Both the appellants shall be set at liberty, if not wanted in any other case.

(Kishore Kumar Mandal, J)

I agree (Sanjay Kumar, J)

HR/-

AFR/NAFR	NAFR
CAV DATE	27.02.2017
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