

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.467 of 2011

=====

Against the judgment of conviction dated 03.03.2011 and the order of sentence dated 11.03.2011, passed in Sessions Trial No. 152 of 2001/67 of 2010, arising out of Mohania P.S. Case No.172 of 1999 by the learned Additional District & Sessions Judge-cum-F.T.C.-2, Bhabua.

=====

Sipahi Ram, Son of Late Sukar Ram, Resident of Village Sondihara, P.S. Bhabua, District Kaimur at Bhabua.

.... Appellant

Versus

The State of Bihar

.... Respondent

=====

Appearance :

For the Appellant	:	Mr. Ram Adya Singh, Advocate Mr. Rajani Kant Pandey, Advocate
For the State	:	Mr. Ashwani Kumar 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: 29-03-2017

This appeal is filed against the judgment of conviction, dated 03.03.2011 and the order of sentence, dated 11.03.2011, passed in Sessions Trial No.152 of 2001/67 of 2010 by the learned Additional District & Sessions Judge-cum-F.T.C.-2, Bhabua, whereby the sole appellant, namely, Sipahi Ram has been convicted under Section 364(A) of the Indian Penal Code and sentenced to imprisonment for life along with a fine of Rs.15,000/- and in default of payment of fine, has been sentenced to rigorous imprisonment for additional one year.

2. The prosecution case, as made out in the *fardbeyan* of Puranmasi Prasad (PW1) of village Ratwar, P.S. Bhabua recorded by



U.P. Singh, Officer-in-Charge, Mohania Police Station on 13.06.1999 at 11.30 P.M. on G.T. Road, Mohania, in short is as follows:

The informant stated that on 13.06.1999 at about 10.15 P.M., his brother Keshnath Prasad went to supervise his mill, which was situated some distance from his house. At about 10.45 P.M., one Ambika Sah came to the residence of the informant and informed him that his brother has been kidnapped by some miscreants. The informant immediately rang up the local S.D.O. and informed him of the incident. The police arrived immediately at 10.55 P.M., to whom promptly the informant made his statement. The informant believes that the kidnapping has been done for ransom.

3. On the basis of *fardbeyan* of Puranmasi Prasad, the police registered Mohania P.S. Case No.172 of 1999, dated 14.06.1999 under Section 364(A) of the Indian Penal Code against unknown. The police took up the investigation and recorded the statement of the informant as well as other witnesses, namely, Ram Awtar Sahu, the *Samdhi* of the informant (PW4), Dinanath Sahu, PW5 and others. In the meantime Keshnath Prasad was released from captivity on the 16th day on 29.06.1999. The Investigating Officer took his statement on the same day. However, Keshnath Prasad did not disclose the name of any of the accused in his statement. The police again recorded the statement of Keshnath Prasad on 08.08.1999, on which date he disclosed the name of four persons who were suspected to be involved in his kidnapping. The



names disclosed were Patru Ram, Dadan Ram, Satendra Kumar and one Kanhaiya Ram. The victim also stated that this appellant also remains in company of Dadan Ram and Patru Ram. In light of confessional statement of the victim, the police arrested Satendra Kohar who in his confessional statement named one Ramkeshi Ram leading to his arrest. Ramkeshi Ram while admitting his involvement in the crime also took name of the appellant as one of the miscreants involved in the crime. The police conducted Test Identification Parade of two of the accused, namely Dadan Ram and Ramkeshi Ram whom the victim duly identified. Finding the case true against the accused persons, the police submitted charge-sheet against the appellant as well as seven others under Sections 364(A)/34 of the Indian Penal Code.

4. The learned Magistrate took cognizance and committed the case to the court of sessions. The trial court framed charge under Sections 364(A)/34 of the Indian Penal Code against all the eight persons to which the accused pleaded not guilty. Two of the accused persons put on trial, namely, Sheomuni Ram and Pannu Sharma died and as such their names were dropped from arrays of accused. On the basis of the evidence and materials on record, the trial court acquitted the five accused persons, namely, Javed Khan, Ramkewal Ram, Kanhaiya Ram, Vijay Kumar Ram and Deenanath Ram for lack of sufficient evidence, while convicting the present appellant under Section 364(A) of the Indian Penal Code.



5. The defence of the appellant in his statement under Section 313 Cr.P.C. was complete denial of the occurrence. However, the appellant did not adduce any oral or documentary evidence.

6. The prosecution examined altogether eight witnesses including the informant Puranmasi Prasad as PW1. The other relevant witnesses are his *Samdhi*, PW4, victim Keshnath Prasad and the Investigating Officer, namely, Umesh Prasad Singh, PW8. PWs. 2 and 3 are formal witnesses, whereas PW5 has turned hostile. PW7 is the Judicial Magistrate who conducted Test Identification Parade of the accused Dadan Ram and Ramkeshi Ram.

7. The informant (PW1) has supported the prosecution case during trial stated in the First Information Report. In his evidence he stated that soon after kidnapping of his brother, a demand for ransom was made by accused persons, which was settled at Rs.2,00,000/-. Thereafter he along with his *Samdhi* (PW4) delivered the ransom amount at the specified destination to two of the accused, namely, Dadan Ram, appellant Sipahi Ram who were accompanied with one Sharma Jee and one more. The following day his brother walked free from captivity.

8. PW4 is the *Samdhi* of the informant. His statement on the point of payment of ransom materially differs from informant (PW1). He stated that he alone had gone to pay the ransom and only one person was present to receive the same. He described the unknown person as being short statured, wearing black glass and having wrapped a black



Gamchha around his neck.

9. PW6 is the victim himself. He has supported the factum of kidnapping. He stated that when he returned home, he learnt from his brother that he was released on payment of ransom of Rs.2,00,000/-. He stated that he recognized two of the accused persons as Dadan Ram and Patru Ram. He stated that he was confined for 14 days in the house of Ramkeshi Ram. He stated that the person who received ransom from PW4 was Satendra Kohar. In the court he recognized Ramkeshi Ram and Sipahi Ram who were present in the dock.

10. On the basis of these evidences, the prosecution has tried to establish the charge against the accused appellant under Section 364(A) of the Indian Penal Code.

11. Mr. Ram Adya Singh, learned counsel appearing for the appellant submits that the First Information Report is against unknown. There are material contradictions in the evidence of the witnesses with respect to the identification and to whom ransom was paid. For instance, as per PW1, he along with PW4 paid ransom to three of the four accused who had come to receive the money, whereas PW4 who is the own *Samdhi* of the informant stated that he alone had gone to pay the ransom and only two persons had come to receive the amount. However, he did not recognize any one of them. Furthermore as per PW1, the appellant was one of the two accused persons who had received the money, however, PW1 has not explained in his entire



evidence as to how he was able to recognize this appellant by name as he was not earlier known to him. Furthermore the victim too has identified him in the dock for the first time after four years of the occurrence. Again, he has not explained as to how he knew the appellant by name. Besides this, the victim in his first statement recorded on 29.06.1999 on which date the victim did not name anyone as the accused. The victim only in his second statement before the police on 08.08.1999, named four persons involved in his kidnapping, namely, Dadan Ram, Patru Ram, Satendra Kohar and Kanhaiya Jee. He next submits that PW6 in paragraph-19 of his deposition stated that he did not tell the name of any accused to anyone nor he heard the name of any accused from any person. He lastly submits that for no fault of his own, the appellant is in custody for 7½ years.

12. Mr. Ashwani Kumar Sinha, learned Additional Public Prosecutor appearing on behalf of the State has defended the judgment of conviction and the order of sentence passed against the appellant. He submits that the informant in his evidence stated that he paid the ransom to the accused including this appellant. Besides this, the victim PW6 also identified the accused in the dock. All these circumstances clearly establish the involvement and participation of the appellant in the crime of kidnapping for ransom.

13. From the materials on record, the following circumstances emerge against the appellant, (a) The informant (PW1)



claims to have paid ransom amount to one Dadan Ram, this appellant and one Sharma Jee apart from one other person who had accompanied them, (b) the victim (PW6) identified the appellant in the dock, and (c) the victim in his second statement made to the police on 08.08.1999 named four persons, involved in his kidnapping, as Dadan Ram, Patru Ram, Satendra Kohar and Kanhaiya Jee. He however, stated that the appellant is also seen in company of Dadan Ram and Patru Ram. On these premises, learned Additional Public Prosecutor submits that the prosecution has been able to establish the case of kidnapping for ransom against the appellant under Section 364(A) of the Indian Penal Code.

14. We would agree with the learned counsel appearing on behalf of the State that if these circumstances are not contradicted or diluted in any other manner by any other materials on record, the circumstances are sufficient to nail the appellant under Section 364(A) of the Indian Penal Code. However, on closure scrutiny of the evidence, we find that the evidence of PW1 and PW4 are contradictory and not trustworthy on these scores. We would examine one by one these circumstances.

15. The first circumstance against the appellant is that PW1 stated that he along with his own *Samdhi* (PW4) paid ransom amount to this appellant, Dadan Ram and one Sharma Jee who were accompanied with two more persons. However, PW4, the own *Samdhi* of PW1, stated that he alone had gone to pay ransom to the accused who



was later on identified as Satendra Kohar by the victim. In view of such conflicting stands between PW1 and PW4 on point of payment of ransom, we do not find it safe to rely on the evidence of PW1 that he paid ransom amount to this appellant and others along with his *Samdhi* in face of specific denial by the later.

16. The other circumstance against the appellant is that he was identified by PW6, the victim, in the court. It is relevant to state here that PW6 was released on 29.06.1999 on which date he did not name any of the accused persons to the police. In his second statement on 08.08.1999, the victim named four persons involved in his kidnapping, namely, Dadan Ram, Patru Ram, Satendra Kohar and Kanhaiya Jee. He incidentally referred that the appellant is seen in company of Dadan Ram and Patru Ram. Besides this, the victim (PW6) identified the appellant after 4½ years for the first time in court after his release from the captivity. The prosecution did not even care to put the appellant on Test Identification Parade. In face of all these material discrepancies, we observe that identification in the court for the first time cannot be relied upon to convict the appellant.

17. Situated thus, we are of the considered view that the prosecution has failed to establish the charge under Section 364(A) of the Indian Penal Code against the appellant beyond all reasonable doubt.

18. In the result, the judgment of conviction dated 03.03.2011 and the order of sentence, dated 11.03.2011, passed in



Sessions Trial No.152 of 2001/67 of 2010, arising out of Mohania P.S. Case No.172 of 1999, by the learned Additional District & Sessions Judge-cum-F.T.C.-2, Bhabua, is set aside. The appellant is acquitted of the charge under Section 364(A) of the Indian Penal Code. The appellant is in custody. He is set at liberty, if not wanted in any other case.

19. The appeal is allowed.

(Samarendra Pratap Singh, J.)

(Arun Kumar, J.)

S.Kumar/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	06.04.2017
Transmission Date	06.04.2017

