

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.1031 of 2011

Against judgment of conviction, dated 09.09.2011, and order of sentence, dated 13.09.2011, passed by learned 1st Additional Sessions Judge, Katihar in Sessions Trial No. 20 of 2007, arising out of Katihar P.S. Case No. 306 of 2006.

=====

Nageshwar Mistri S/O Late Kunai Mistri R/O Village - Mamalkha, P.S. Sabour
District – Bhagalpur Appellant

with

=====

Criminal Appeal (DB) No. 1128 of 2011

=====

Ratan Singh S/O Dudhnath Singh Resident Of Mohalla- Mofarganj, Dhalaighar,
P.S.- Katihar Towan, Distt.- Katihar Appellant

with

=====

Criminal Appeal (DB) No. 354 of 2012

=====

Sonam Kumari @ Sonam Devi W/O Sanjay Mallik R/O Moh-O.T.Para, P.S.-
Katihar, Distt-Katihar Appellant

Versus

The State Of Bihar Respondent in all the three appeals

=====

Appearance :

(In CR. APP (DB) No.1031 of 2011)

For the Appellant : None

Amicus curiae Mr. Ranbir Singh, Advocate

For the State Mr. A.K.Sinha, APP

In CR. APP (DB) No.1128 of 2011

For the appellant Mr. Raghvendra Kr.Singh, Advocate

For the State : Mr. A.K.Sinha, APP

In CR. APP (DB) No.354 of 2012

For the appellant : None

Amicus curiae Mr. Animesh Kumar Mishra, Advocate

For the State : Mr. A.K.Sinha, APP

=====

CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

and

HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH)

Date: 30-06-2017

All the three appeals have been preferred against the judgment of conviction, dated 09.09.2011, and order of sentence, dated 13.09.2011, passed by learned 1st Additional Sessions Judge, Katihar in Sessions Trial No. 20 of 2007, arising out of Katihar P.S. Case No. 306 of 2006, by which all the three appellants have been



convicted under Section 364A/34 of the Indian Penal Code and sentenced to undergo imprisonment for life and a fine of Rs.2000/- and in default thereof to undergo imprisonment for three months.

2. The prosecution case, in short, as made out in the written report of one Binod Kumar Bhagat, son of Ram Chandra Bhagat, resident of Jamuna Flour Mill Campus Binodpur, P.S. & District- Katihar dated 03.08.2006, addressed to Officer-in-charge, Town Police Station, is as follows:-

(i) The informant stated that on 01.08.2006 he was at Delhi on a business trip. On 02.08.2006, his wife Rekha Devi informed on his mobile No. 9431229211 that their son Banti Kumar @ Abhishek Kumar has not returned home till late night. His Mobile phone bearing no. 9431411911 also did not respond, as it was switched off. On receipt of the news, the informant also tried to contact his son on his mobile number, but all was in waste, as the same was switched off. On the following morning, he again tried his son on mobile phone which was picked up by another person, who stated that his son is kidnapped. The person further informed that he will have to pay a sum of Rs. 50 lakh for his release. He also asked the informant to keep his mobile on and not to inform the police about their talks. On receipt of the information, the informant returned to Katihar from Delhi.

(ii) On reaching Katihar, his wife further informed that she last talked with her son on 01.08.2006 at 1.30 P.M., when he was



in Karpuri market. Furthermore, on 02.08.2006, Banti talked to his Mause Sanjay Chaudhary and also made one Sonam kumari talk to her as well. He also informed his Mause that he was with Sonam. On the same day, her son Banti also talked to his friend Sonu @ Sumit Kumar at Calcutta and also made him talk to Sonam Kumari. She also contacted people of the surrounding areas as well as relatives, but could not get any concrete information about whereabouts of her son.

(iii) On 02.08.2006, the informant's wife rang up Banti, but the call was picked up by another person, who stated that he will make Banti talk to her within two minutes. However, the person, who picked up Banti's Mobile phone, did not make him (Banti) talk to her mother. Thereafter the informant's wife tried to call Banti's mobile number, but again it was switched off. The informant's wife also made Sanha to the aforesaid effect. The informant once again lodged detailed information regarding the entire incident. The informant believes that his son has been kidnapped by ante-social elements for ransom.

3. On the basis of the written report of the informant, Katihar P.S. Case No. 306 of 2006, dated 30.08.2006, was registered for the offences under Sections 364A of the Indian Penal Code. After lodging the F.I.R., the police took further statement of the informant and statement of other witnesses. In course of investigation, the police intercepted one Nageshwar Mistri while



trying to pickup ransom amount from Tingachhia Brahmchari Asthan. On confessional statement of Nageshwar Mistri, the police arrested the other accused persons and also recovered the mobile of Banti from the pocket of Ratan Singh. After investigation, the police submitted charge-sheet under Sections 364A, 302, 201, 212 and 120B of the Indian Penal Code against 35 accused persons. Thereafter cognizance was taken and the case was committed to the Court of Sessions for trial, giving rise to S.T. No. 20 of 2007 and charges were framed.

4. Initially, there were 35 accused persons facing trial. However, during course of trial, the case of 15 accused persons were separated and the case of 20 accused persons, who were in custody, including the appellants Ratan Singh and Nageshwar Mistri continued. The charges were read over to 20 accused persons including the present two appellants, namely, Ratan Singh and Nageshwar Mistri, who denied the same and claimed to be tried. In the meantime, Split up Sessions Trial No. 20 of 2007 also proceeded against some accused, who was not in custody including Sonam Kumari, the appellant of Cr. Appeal (DB) No.354 of 2011.

5. The prosecution, in order to substantiate its case, examined as many as 22 witnesses, whereas one Sanjay Kumar was examined as Court witness. The prosecution also produced documentary evidence in support of its case. However, 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. The learned trial court on consideration of materials on record convicted both the present three appellants under Section 364A/34 of the Indian Penal Code and acquitted rest of the 30 accused persons.

6. Being aggrieved, all the three convicts have preferred three separate appeals.

7. The issue before this Court is whether the prosecution has been able to prove the charge under section 364A/34 IPC against all the three appellants. The prosecution in support of its case has examined two witnesses. PW 1 Manoj Lawrens and PW 2 Abhay Kumar are chance witness. They state that they were taking tea at Durga Ashthan around 3 to 3.30 PM. They saw the victim Abhishek Kumar @ Banti along with a girl coming on a rickshaw followed by appellant Ratan Singh on 1.8.2006. PW 3 Sonu Kumar and PW 4 Chandan Gupta are hearsay witness. PW 5 Binod Yadav is a formal witness. PW 6 Pushpesh Kumar Bhagat is a witness to seizure of Mobile phone from Ratan Singh who was arrested from Maldah Railway station on 9.9.2006 at about 11 PM. PW 7 Nimay Kumar Ghosh is the shop keeper and stated that the victim Abhishek Kumar @ Banti had taken cold drinks at the shop along with a girl. PW 8 Sumit Kumar Daulani is also a hearsay witness and the friend of the victim. He stated that the latter had telephoned to him at 4 to



4.30 PM on 1.8.2006. He had also talked to his girl friend who told him that she was from Balurghat, Silliguri. PW 9, 10, 11, 12 are hearsay witness. PW 13 Rekha Choudhary, mother of the victim has supported the prosecution case as stated by her husband, in the FIR. PW 14 Sanjay Choudhary is the Mausa of the victim and stated that he talked with the victim and his girl friend in the after noon at about 3.30 PM on 1.8.2006. PW 15 Amar Yadav is the owner of the vehicle which had been hired by Niranjan Mandal, for alleged kidnapping of the victim. PW 16 Lalan Yadav is a clerk at Katihar Bus stand. He stated that the victim had requested him to arrange a vehicle. PW 17 Umakant Mandal is a hearsay witness. PW 18 Sarwanand Singh is the IO of the case and has brought the seized materials including the mobile phone to the police station. PW 19 Binod Kumar Bhagat is the IO of the case and has supported the prosecution case stated in the FIR. He stated that Nageshwar Mistri who arrested by the police in the process of receiving ransom amount in village Brahmchari asthan Ghogha near Naugachia. He further stated that the mobile phone of his son was recovered from the possession of the appellant Ratan Singh in his presence at Maldah Railway station. PW 20 Jugal Kishore Sinha is the IO of the case. PW 21 SI Manish Kumar Saha is another IO of the case who arrested Nageshwar Mistri from Brahmchari asthan. PW 22 Ashok Kumar Singh is the member of the raiding team who arrested Ratan Singh from Maldah Railway station.



8. Separate arguments have been advanced on behalf of the appellants. We would deal their cases one by one.

Cr. Appeal (DB) No.1031 of 2011 (Nageshwar Mistry Vs. The State of Bihar).

9. Learned Amicus curiae appearing for the appellant states that there is no sufficient materials on record to infer the culpability of this appellant in the crime who is already languishing in jail for 11 years. He submits that the name of this appellant has figured in the evidence of the informant for the first time during trial to the effect that he was arrested while he was moving towards a tree near Brahmachari Asthan Ghogha in Naughachia to pick up a bag containing ransom. However the I.O., who is said to have arrested this appellant, on 14.8.2016 merely stated that he arrested him from a local mandir. The I.O. (PW 21) did not state the circumstances in which this appellant was arrested.

10. There is nothing to show in the evidence of the I.O. whether he was arrested while performing Puja in the mandir or whether he was arrested while trying to pick up the bag kept beneath a tree. Learned counsel submits that it may be possible that this appellant may have been passing by the tree and on mere suspicion he was arrested. We would agree with the submission of the learned amicus curiae that apart from the evidence of the informant, there is no cogent material to connect the appellant with the alleged crime. There is also no allegation that the victim was seen either on the



date of occurrence or even subsequent to the kidnapping. There is also no allegation that the victim was kidnapped in the local mandir in village Ghogha, where this appellant is said to be living. Furthermore, the I.O. also not stated that in order to trap the accused persons, he arrested this appellant while he was trying to pick up the ransom amount from near a tree.

11. In such circumstances, we do not find that the prosecution has brought sufficient materials to bring the charge under section 364 A IPC against the appellant Nageshwar Mistry. Criminal Appeal (DB) Nos. 1031 of 2011 is allowed. Judgment of conviction dated 9.9.2011 and order of sentence dated 13.9.2011, passed by the learned Additional Sessions Judge-I, Katihar in Sessions trial no. 20 of 2007, in respect of appellant Nageshwar Mistri, is set aside. The appellant (Nageshwar Mistry) who is in custody, is directed to be set at liberty forthwith, if not wanted in any other case.

Cr. Appeal (DB) No.1128 of 2011 (Ratan Singh Vs. The State of Bihar).

12. As per the prosecution case, PWs 1 and 2 saw this appellant following the rickshaw in which the victim, said to be sitting with a girl on 1.8.2006. It has further come in the evidence of the informant that mobile phone used by his son was recovered from the possession of this appellant during his arrest on 9.9.2006 from Maldah railway station by PW 21 SI Manish Kumar Saha and PW



22 SI Ashok Kumar Singh. The trial court relying upon these evidence convicted the appellant under section 364A/34 IPC.

13. Mr. Raghvendra Kuamr Singh, learned counsel appearing for the appellant Ratan Singh submits that the seized materials were not produced before the court. Even PW 22, SI Ashok Kumar Singh, who is the I.O. of the case, stated that the seized mobile phone was not recovered in his presence. Furthermore, PW 21 does not talk about the seizure of the Mobile phone, though as per the prosecution case, the mobile phone was seized from this appellant jointly by PW 21 and PW 22 on 9.9.2006 from the Maldah railway station in the night. Learned counsel thus submits that the police has not been able to prove beyond all reasonable doubt that the mobile phone seized from the appellant was in fact the same mobile phone which was being used by the victim Banti Kumar.

14. In any view of the matter, as he has not been given opportunity under section 313 of the Cr.P.C. to explain that the mobile phone which was being used by Banti Kumar or from which call was made for ransom was recovered from him, we would agree with the submission of the learned counsel for the appellant that the trial court ought to have given an opportunity to this appellant to explain his defence with respect to the alleged recovery of mobile phone from his possession under section 313 Cr.P.C as his conviction is primarily based on this piece of evidence. As such, we



set aside the judgment of conviction of this appellant and remand the matter to the trial court to provide him an opportunity under section 313 of the Cr.P.C. to explain his case with respect to the recovery of mobile phone said to be that of the victim, from his possession. The trial court thereafter would decide the matter on its own merit without prejudice.

15. It will be open for the parties to lead their argument. It is expected that the trial court would dispose of the matter within four months from the date of receipt of a copy of this order.

16. As the appellant is already on bail, he is permitted to remain on bail on the same bail bond. However he would co-operate with the trial court.

Cr.Appeal (DB) No. 354 of 2012 (Sonam Kumari @ Sonam Devi Vs. The State of Bihar).

17. In case of appellant Sonam Kumari @ Sonam Devi, the trial court has convicted her under section 364A of the IPC., as three witnesses, namely, PW 1 Manoj Lawrens, PW 2 Abhay Kumar and PW 7 Nimay Kumar Ghosh stated that they had seen a girl with the victim on 1.8.2006. Furthermore, PW 8 Sumit Kumar Daulani and PW 14 Sanjay Choudhary, the friend and Mausa of the victim stated that on the fateful day, the victim Banti made them to talk to his girl friend which is referable to this appellant.

18. Learned amicus curiae argued that even the prosecution



case is accepted to be true, there is no material to suggest that this appellant was involved in the kidnapping. No incriminating article has been recovered from her possession or from her house.

19. We have perused the materials on record and cautiously gone through the evidence of witnesses. Apart from the fact that the girl was seen with the victim on 1.8.2006, there is no cogent material on record which may point to the involvement of the appellant in the crime. As such, we are of the considered view that the prosecution has failed to produce sufficient materials on record to bring home the charges against this appellant. Criminal Appeal (DB) Nos. 354 of 2012 is allowed. Judgment of conviction dated 9.9.2011 and order of sentence dated 13.9.2011, passed by the learned Additional Sessions Judge-I, Katihar in Sessions trial no. 20 of 2007, in respect of appellant Sonam Kumari @ Sonam Devi, is set aside. She is on bail. As such, she is discharged from the liabilities of the bail bonds.

(Samarendra Pratap Singh, J)

(Prakash Chandra Jaiswal, J)

Shashi.

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	27.7.2017
Transmission Date	27.7.2017

