

IN THE HIGH COURT OF JUDICATURE AT PATNA

(Against the judgment of conviction dated, 05.07.2012, and order of sentence dated 07.07.2012, passed by Sri Abhay Kumar Bairiyal, learned Additional Sessions Judge, Benipur, Darbhanga in Sessions Trial No. 122 of 2010, arising out of Bahera P.S. Case No. 244 of 2009)

Criminal Appeal (DB) No.826 of 2012

Arising Out of PS. Case No. -244 Year- 2009 Thana -Bahera District- DARBHANGA

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1. Kanhaiya Kunwar @ Chandramani Kunwar, S/O Sri Nanhe Kunwar @ Nilmani Kunwar

2. Md. Rizvi @ Bhaijan , S/O Md. Raji Ahmad
Both residents of Village - Lakhni Bigha, Mahesh Patti, P.S.- Ujiarpur, District- Samastipur

.... Appellants

Versus

The State of Bihar

.... Respondent

With

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Criminal Appeal (DB) No. 716 of 2012

Arising Out of PS.Case No. -244 Year- 2009 Thana -Bahera District- DARBHANGA

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Rama Prasad Sahni, son of Batahu Sahni Belari, resident of Village- Belari, P.S. Ujiarpur, District- Samastipur.

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

(In CR. APP (DB) No.826 of 2012)

For the Appellant/s : Mr. Bibhuti Prasad Pandey, Sr. Advocate
Mr. Rakesh Kumar, Advocate

For the Respondent : Mr. A. K. Sinha, A.P.P.

(In CR. APP (DB) No.716 of 2012)

For the Appellant/s : Mr. Alok Kumar, Advocate
Mr. Birendra Kumar, Advocate

For the Respondent/s : Mr. S.C. Mishra, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

And

HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH)

Date: 14-02-2017

Both the appeals have been preferred against the judgment of conviction dated, 05.07.2012, and order of sentence, dated 07.07.2012, passed by learned Additional Sessions Judge,



Benipur, Darbhanga in Sessions Trial No. 122 of 2010, arising out of Bahera P.S. Case No. 244 of 2009, by which all the three appellants have been convicted under Sections 364A/34 and 328/34 of the Indian Penal Code and sentenced to undergo R.I. for life and a fine of Rs.5,000/- each under Section 364A/34 of the Indian Penal Code and in default to undergo R.I. for further one year. All the three appellants have further been sentenced to undergo imprisonment for five years and a fine of Rs.2,000/- each under Section 328/34 of the Indian Penal Code and in default to undergo imprisonment for six months. However, both the sentences have been ordered to run concurrently.

2. The prosecution case, as unfolded in the written report of Chanda Devi (P.W.4) made to officer-in-charge of Bahera police station on 03.10.2009, in short, is as follows:

The informant is a resident of Raghunathpur, P.O.- Bela, P.S.- Mufassil, District- Samastipur. She stated that her husband works in Satyam Diesel located at Bharat Chowk, Benipur where they are at present residing in the rental premises of one Lalan Jee. On 28.09.2009, one Kanhaiya Kunwar of village Lakhanipur, Maheshpatti, P.S. Ujiarpur, District Samastipur came to their house and stayed there in the night also. On the following morning i.e. 29.09.2009, he requested her husband to drop him at Darbhanga. Since her husband also had to bring some goods from Darbhanga, he



agreed to drop him there. Her husband for going to Darbhanga took the motorcycle of Dr. Ashok Kumar Yadav, who was also residing on rent in the same premises. The informant's husband, as such, proceeded to Darbhanga along with Kanhaiya Kunwar on the motorcycle of Dr. Ashok Kumar Yadav, bearing registration no. BR 7C 3536. While leaving for Darbhanga, her husband stated that he would return by 12 'o' clock, however, when her husband did not return even till evening, she rang up on his mobile, bearing no. 9631958669, but with no result, as the same was in a switched off mode. When her husband did not return till late in the night, she began to make enquiries about him from her relatives and also lodged Sanha with Bahera police station, on 01.10.2009. On 03.10.2009, a call for ransom of Rs.15,00,000/- (Fifteen lac) was received on the mobile of her aunt, Sheela Devi, bearing no. 9931357227 at about 11.17 A.M. from mobile no. 8051658935. The caller further threatened that in case money is not arranged within four days, the informant's husband would be done to death. The informant further stated that Kanhaiya Kunwar has association with a noted criminal Rizvi @ Bhaijan, who hails from Samastipur. The informant believes that Kanhaiya Kunwar along with his associate Rizvi @ Bhaijan (both are appellants in CR. APP (DB) No.826 of 2012) has abducted her husband for ransom.

3. On the basis of the written report, Bahera P.S. case no.



244 of 2009, dated 03.10.2009, was instituted under Sections 364(A)/34 of the Indian Penal Code. It is relevant to state that the written report, which was signed by the informant Chanda Devi (P.W.4), was written by Baban Chaudhary (P.W.1). The officer-in-charge of Bahera police station himself took over the investigation of the case.

4. In course of investigation, the investigating officer took restatement of the informant and other witnesses. He also raided the house of Rizvi @ Bhaijan, from whose house different articles have been recovered. The investigating officer finally recovered the informant's husband Raju Kumar Jha (P.W.6) from Sakri railway station along with appellant Ram Prasad Sahni (CR. APP (DB) No.716 of 2012), who was immediately arrested. The appellant no.1, namely, Kanhaiya Kunwar @ Chandramani Kunwar, was also arrested, whereas appellant no.2, namely, Rizvi @ Bhaijan (CR. APP (DB) No.826 of 2012) is said to have escaped. The police also got injuries on the person of the victim, examined by the Dr. Jitendra Narayan (P.W.11).

5. After completion of the investigation, police submitted charge-sheet under Sections 364(A)/34 and 328/34 of the Indian Penal Code. The learned Magistrate took cognizance of the offences and committed the case to the Court of Sessions for trial and the case



finally came to the file of Additional Sessions Judge, Benipur, Darbhanga for trial and disposal. All the three appellants were charged under Sections 364(A)/34 and 328/34 of the Indian Penal Code, to which they pleaded not guilty and claimed to be tried.

6. The prosecution in support of its case examined as many as 13 witnesses, who are as follows: P.W. 1 is Baban Choudhary, P.W.2 is Shila Devi, P.W. 3 is Maha Laxmi Devi, P.W.4 is Chanda Devi (informant), P.W.5 is Md. Zahiruddin, P.W. 6 is Raju Kumar Jha (victim), P.W. 7 is Hari Narayan Singh, P.W. 8 is Ram Vilash Rai, P.W.9 is Ashok Kumar Yadav, P.W. 10 is Prem Raj Chauhan, P.W.11 is Dr. Jitendra Narayan and P.W. 13 is Ram Babu Yadav. Raju Kumar Jha and Baban Chaudhary were also examined as Court witnesses.

7. Out of these 13 witnesses, P.W.2 Shila Devi is the aunt of the victim, on whose mobile the ransom call was made, as per the prosecution case. P.W.3 Maha Laxmi Devi and P.W.4 Chanda Devi are mother and wife of the victim. It is relevant to state that Shila Devi (P.W.2) and Maha Laxmi Devi (P.W.3) have not supported the story of kidnapping for ransom. P.W. 9 is Ashok Kumar Yadav, whose motorcycle was taken by the victim for traveling to Darbhanga to drop Kanhaiya Kunwar (appellant no.1 of CR. APP (DB) No.826 of 2012). P.W.11 Dr. Jitendra Narayan, who conducted medical



examination of the victim, found pain and swelling on his left upper arm and shoulder. He further found that the breath of the victim also smell alcoholic.

8. The defence did not examine any witness in support of its case nor adduced any documentary evidence. However, the case, as disclosed in the statement under Section 313 of Cr.P.C. is complete denial of the involvement in kidnapping or administering any poison or any drugs to the victim Raju Kuamr Jha.

9. The trial court relying upon the evidence of Chanda Devi (P.W.4), wife of the victim, as well as the victim Raju Kumar Jha (P.W.6) convicted the appellants under Sections 364(A)/34 and 328/34 of the Indian Penal Code and sentenced them, as noticed in the earlier paragraphs of the judgment.

10. Mr. Bibhuti Prasad Pandey, learned senior counsel appearing for the appellants of CR. APP (DB) No.826 of 2012, submits that there is no legal material to establish a case of kidnapping for ransom by the prosecution side. He also submits that there is no evidence to make out a case under Section 328/34 of the Indian Penal Code against any of the appellants, as the victim was not recovered from their confinement. He further submits that the very basis of the prosecution case is the call of ransom said to be made on the mobile of the informant's aunt Shila Devi (P.W.2). However,



Shila Devi (P.W.2) has not supported the prosecution case that she owned or possessed any mobile or for that matter any call for ransom was made on her mobile. He further submits that the appellants have already remained in custody for more than seven years without any substantial materials against them.

11. Learned counsel appearing for appellant Ram Prasad Sahani (CR. APP (DB) No.716 of 2012) submits that his case stands even on better footing than the appellants of CR. APP (DB) No.826 of 2012, as the only materials against him is that he was apprehended at Sakri Railway Station, as he was talking with one of the appellants of CR. APP (DB) No.826 of 2012, namely, Md. Rizvi @ Bhaijan from where victim was also recovered. Apart from this, there is iota of evidence against him.

12. On the other hand, learned Additional Public Prosecutor appearing for the State has defended the judgment of conviction and order of sentence passed against the appellants. Learned counsel submits that the appellant Kanhaiya Kunwar (CR. APP (DB) No.826 of 2012) on the pretext of being dropped at Darbhanga, in fact, had scripted a plan to kidnap the victim for ransom and consequently the call for ransom was made on the mobile of Shila Devi (P.W.2), which the informant had stated in her written report, as well as reiterated in her evidence. He next submits that Dr.



Jitendra Narayan (P.W. 11), who examined the victim on 14.10.2009, smelt alcohol and also observed that the victim was having pain and swelling over left upper arm. He submits that the appellants had in fact confined the victim and had taken him from one place to other to avoid being caught by the police.

13. We have heard the learned counsel for the parties and perused the materials on record. The issue for consideration before the Court is whether there is sufficient material to convict the appellants under Sections 364(A)/34 and 328/34 of the Indian Penal Code.

14. Before we consider the rival submission of the parties, it would be necessary to notice Section 364(A) of the Indian Penal Code itself. As per the provision to constitute a case under Section 364(A) of the Indian Penal Code, the prosecution should establish that there was a demand for ransom after abduction of the victim, with a threat, that if the money is not paid he/she would be killed. In the instant case, we do not find that the prosecution has been able to establish all important ingredient of demanding ransom by the accused persons.

15. The prosecution in support of its case has examined as many as four family members, namely, Shila Devi (P.W.2) aunt of the victim, Maha Laxmi Devi (P.W.3) mother of the deceased, Chanda Devi (P.W.4) wife of the victim and Raju Kumar Jha (P.W.6)



the victim himself. However, Shila Devi (P.W.2) and Maha Laxmi Devi (P.W.3) have not supported the case of kidnapping, much less the offence of kidnapping for ransom. Baban Chaudhary (P.W.1) too has not supported the case of kidnapping or kidnapping for ransom. The victim Raju Kumar Jha (P.W.6) stated that he had gone along with the appellant Kanhaiya Kunwar @ Chandramani Kumar on his own free will, to drop him at Darbhanga, as he too had some works there. Further-more, Raju Kumar Jha (P.W.6) in his evidence stated that though he was having mobile, he never contacted any of his family members, from the time of his kidnapping to the date of his recovery. On the other hand, the victim (P.W.6) in para. 7 and 15 stated that the accused used to tell him that he would be only made free, if the case filed against him stands withdrawn.

16. It would thus appear that the victim himself has not supported the story of kidnapping, much less one of asking ransom for kidnapping. Only the informant Chanda Devi (P.W.4) in her evidence stated that there was a ransom call on the mobile of her aunt (P.W.2), bearing no. 9931357227, making a demand for ransom. The statement of the informant would not carry any weight, as Shila Devi (P.W.2) the aunt of the victim, in para 8 of her evidence has denied that she has any mobile or any call was made to her for ransom. Further-more, the mother of the victim Maha Laxmi Devi (P.W.3) stated that her son



was not kidnapped for ransom. She even stated that she does not know as to who had kidnapped her son. Maha Laxmi Devi (P.W.3) in para 12 of her evidence stated that her son Raju had gone out of his house and as he had not returned, his wife has instituted a case on mere suspicion. Furthermore, there is ample evidence on record that there was strained relation between the informant and her husband and she had even lodged a case against him.

17. Thus, we find that there is no cogent material against the appellants to prove the charge under Section 364(A)/34 of the Indian Penal Code and as such we acquit them from the said charges.

18. So far as the conviction under Sections 328/34 of the Indian Penal Code is concerned, we further find that again the prosecution is lacking in evidence to bring home the said charges against the appellants. Admittedly, the victim was not recovered from any confinement, rather he was recovered from a Railway Platform. It is the case of the victim himself that he was not kept in any solitary confinement, rather he was taken from one place to other on different dates by train. Further-more, there is no evidence as to any specific place, where the victim was kept confined. There is also no medical evidence that the victim was administered any poison or drugs and at the best the doctor said that the victim smelt alcoholic. The victim, as per his own version, was taken in train on more than one occasion.



However, it is conspicuous as to why he did not raise hulla that he was kidnapped.

19. In view of the foregoing discussions, we further hold that the prosecution has also failed to prove the charge under Section 328/34 of the Indian Penal Code against the appellants.

20. In the result, both the appeals succeed. The judgment of conviction and order of sentence passed by the learned trial court is set aside and all the appellants, named above, are acquitted from the charges levelled against them. The appellants, namely, Kanhaiya Kunwar @ Chandramani Kunwar and Md. Rizvi @ Bhaijan (Criminal Appeal (DB) No. 826 of 2012), who are in custody, be set at liberty forthwith, if not required in any other case. The appellant, namely, Rama Prasad Sahni, (Criminal Appeal (DB) No. 716 of 2012) is already on bail. He is discharged from the liabilities of his bail bonds.

(Samarendra Pratap Singh, J.)

(Arun Kumar, J.)

Uday/-

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