

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.246 of 2015

Arising Out of PS.Case No. -72 Year- 2006 Thana -PARIHAR District- SITAMARHI

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1. Jitu Rai Son of Jagdish Rai
2. Ram Janam Rai Son of Late Prasad Rai
3. Jagdish Rai Late Prasad Rai
4. Rajgir Rai Late Prasad Rai All resident of Khoparhiya, P.S. Parihar, District
Sitamarhi Appellant/s

Versus

1. The State of Bihar Respondent/s

with

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Criminal Appeal (SJ) No. 323 of 2015

Arising Out of PS.Case No. -72 Year- 2006 Thana -PARIHAR District- SITAMARHI

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1. Hansh Lal Rai Son of Late Ramjee Rai, R/o Village - Khoparheecha, P.S. -
Parihar, District - Sitamarhi. Appellant/s

Versus

1. The State of Bihar Respondent/s

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Appearance :

(In CR. APP (SJ) No.246 of 2015)

For the Appellant/s : Mr. Kumar Rajeev, Adv.

For the Respondent/s : Mr. Sujeet Kr. Singh, APP

(In CR. APP (SJ) No.323 of 2015)

For the Appellant/s : Ms. Uma Kumari, Amicus Curiae

For the Respondent/s : Mr. Abhay Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 05-03-2018

Appellants, Jitu Rai, Ram Janam Rai, Jagdish Rai,
Rajgir Rai (Cr. Appeal (SJ) No. 246/2015), and appellant, Hansh Lal
Rai (Cr. Appeal (SJ) No. 323/2015) have been found guilty for an
offence punishable under Sections 363/34 of the IPC and each one has
been sentenced to undergo RI for 4 years as well as to pay fine of Rs.
1000/-, under Section 366A IPC and sentenced to undergo RI for 7
years as well as to pay fine of Rs. 5,000/- in default thereof, to
undergo RI for 2 months additionally against both heads with a further
direction to run the sentences concurrently vide judgment of
conviction dated 20.04.2015 and order of sentence dated 28.04.2015



passed in Sessions Trial No. 524/2007/137/2013 and that being so, have been heard together and are being disposed of by a common judgment.

2. On account of absence of learned counsel for the appellant in Cr. Appeal (SJ) No. 323/2015, Mrs Uma Kumari, Advocate, has been appointed as an Amicus Curiae for assisting the Court which she consented.

3. Jai Murti Devi filed a complaint petition no. 824/2006 on 28.07.2006 alleging inter alia that at an earlier occasion accused, Jitu Rai and Hansh Lal Rai had kidnapped her minor daughter Shital Kumari and for that on the Fard-e-beyan of her husband Sarablal (PW 5), Parihar PS Case No. 47/2006 was registered under Section 363, 366A/34 of the IPC whereupon investigation commenced and during course thereof, victim, Shital Kumari (note examined) was recovered and her statement under Section 164 was recorded. Because of the fact that the victim was found to be minor and as she shown inclination to stay along with her parents on account thereof, the Court had handed over custody of the victim to them and accordingly, victim was staying at her place. On the alleged date and time of occurrence (in the night of 25/26.07.2006) while they were asleep, Jitu Rai, Jagdish Rai, Ram Janam Rai, Rajgir Rai Hansh Lal Rai along with 10-12 unknown persons came after dismantling her thatched wall and lifted her daughter Shital Kumari. On her alarm she woke up, forbade the accused persons not to indulge in such kind of



activity whereupon she was assaulted by fists and slaps by Ram Janam Rai. On her cry, her husband rushed in rescue who was assaulted by Jagdish Rai. Then thereafter, on an order of Rajgir Rai, Ram Janam Rai took away Rs. 3000/- after breaking open a box while Hans Lal Rai snatched away Hansuli. Rajgir Rai had taken away, Sari, Saya, Blouse, Payal. Then thereafter, they took away Shital Kumari with a warning that subsequent institution of case will be hazardous to her interest.

4. Learned lower court, on the aforesaid complaint petition, directed the concerned police station to register and investigate the case as provided under Section 156(3) of the CrPC whereupon Parihar PS Case No. 72/2006 was registered followed with an investigation as well as submission of charge-sheet which happens to be basis of the trial, meeting with ultimate result, subject matter of instant appeal.

5. Defence case as is evident from the mode of cross-examination as well as statement under Section 313 IPC is that of complete denial. It has further been pleaded that victim Shital Kumari happens to be major and she on her own married with appellant, Jitu Rai and is enjoying her conjugal life whereunder she had begotten one son and a daughter. Though no oral evidence has been adduced but Ext-A, deposition of Shital Kumari relating to Parihar PS Case No. 47/2006 has been exhibited as Ext-A.

6. In order to substantiate its case, prosecution had



examined altogether 8 PWs who are PW-1, Kapileshwar Rai, PW-2, Janglal Rai, PW-3, Ranglal Rai, PW-4, Ramasray Rai, PW-5, Sarablal Rai, PW-6, Jai Murti Devi, PW-7, Ram Sanahi Rai, PW-8, Sri Ram Tiwari. Side by side had also exhibited Ext-1, endorsement over complaint petition, Ext-2, Formal FIR. Though no oral evidence has been adduced on behalf of defence but Ext-A, deposition of alleged victim, Shital Kumari relating to Parihar PS Case No. 47/2006 has been made exhibit at Ext-A.

7. In order to challenge the finding having been recorded against the appellants, it has been submitted on behalf of appellants that the learned lower court had acted in a mechanical manner while convicting the appellants. In order to justify the same, it has been submitted that admittedly for the purpose of kidnapping of Shital Kumari at two different occasions in the same year as alleged by the prosecution took place then in the aforesaid background, two independent trial would not have been allowed in the background of presence of Section 219 CrPC. According to Section 219 CrPC three incidents of similar kind having against an individual or relating to somebody else has to be clubbed together and be tried under single trial and so, proceeding ahead independently suggests indifferent attitude of the learned lower court due to incompetency of the prosecution.

8. In the aforesaid background, it has also been submitted that prosecution had itself disclosed regarding incident of



kidnapping of Shital Kumari and for that, a specific case bearing Parihar PS Case No. 47/2006 was registered and further there also happens to be divulgence at the end of the prosecution that victim was traced out, her statement was recorded under Section 164 CrPC and, as she was minor as well as she had shown inclination to stay with her parents in the aforesaid background, she was staying with PWs-5 and 6, her parents wherefrom she was again kidnapped and for that, the instant prosecution has been launched, should have been substantiated with an order-sheet specifying the status of the victim to be minor as well as her inclination to stay with her parents and that she was handed over under custody of her parents. Having absence at the end of the prosecution coupled with the fact that at an earlier occasion police was directly contacted, substantial case was registered while so far presence litigation is concerned, in order to ward off any opportunity for getting the allegation frustrated, filed complaint petition and then got it registered after so many days during midst thereof, managed the whole situation in order to sail with the false prosecution.

9. It has also been submitted that prosecution had not denied with regard to prosecution of these appellants relating to Parihar PS Case No. 47/2006 leading to Session Trial No. 593/2007 whereunder alleged victim was examined on behalf of prosecution as PW-7 whereunder she completely smashed the allegation of kidnapping as well as with regard to her status being minor. That



being so, the prosecution was well aware with the fact regarding subsequent prosecution being taken up for kidnapping of aforesaid victim and in the aforesaid circumstance, would have prayed before the court, that being victim of Parihar PS Case No. 72/06 (Sessions Trial No. 524/2007) she be detained so that her evidence be recorded in order to substantiate the allegation of the prosecution regarding her kidnapping in the night of 25/26.07.2006. Not only this, while she was deposing as PW-7 in the year 2010, she should have been tested over subsequent activity in the background of the fact that the victim had not supported the case of the prosecution with regard to her kidnapping relating to Parihar PS Case No. 47/06. That being so, the judgment of conviction and sentence recorded by the learned lower court happens to be bad, illegal, perverse whereupon is fit to be set aside.

10. On the other hand, learned APP while supporting the finding recorded by the learned lower court, has argued that had there been fair play at the end of the appellants, they would have examined the victim in their defence, whereunder they failed. Deposition of alleged victim relating to another Sessions Trial would not be relevant for the instant prosecution because of the fact that this case relates to another incident. At the present moment, it has also been argued that from the suggestion whatever given by the defence, it is apparent that they had admitted presence of Shital Kumari at their place, that means to say, the victim of kidnapping under their custody



is found duly substantiated. The only option which the defence had to rebut the same, by way of examination of alleged victim. As the victim has not been examined, consequent thereupon, considering the nature of evidence inconsonance with the suggestions having at the end of the defence, the finding recorded by the learned lower court happens to be just, legal and proper and is fit to be confirmed.

11. From perusal of the complaint petition which now became written report, there happens to be specific disclosure that accused, Jitu Rai and Hans Lal Rai had kidnapped Shital Kumari, a minor and for that, Parihar PS Case No. 47/06 was registered and during course of investigation victim was recovered, her statement under Section 164 CrPC was recorded and then, as per wish of the victim as well as considering the status of the victim to be a minor, she was given under custody of her parents who are none else than PWs-5 and 6 by the order of the court. So, it was incumbent upon the prosecution to have properly placed the positive, affirmative evidence in order to support the custody of the victim to have by a judicial order. There happens to be laches on the part of the prosecution on that very score. When the evidence of victim who was examined as PW-7 relating to Parihar PS Case No. 47/2006 leading to Sessions Trial no. 593/2007 have been gone through, it is apparent that she had disowned her status to be a minor and in likewise manner, she had not spoken anything relating to her custody to her parents by a judicial order. In spite of having been claimed by her, during her examination-



in-chief, that she was staying with her husband Jitu Rai and is enjoying her marital life, begotten two children, was not at all declared hostile, create doubts over the claim of the prosecution that the victim was ever under their custody. This part should have been properly explained at the end of the prosecution in the background of puzzlement relating to their conduct as at an earlier occasion, they directly approached the police whereupon Parihar PS Case No. 47/2006 was registered but at the present moment, they have come to the court, filed a complaint on the basis of which, instant case has been registered consuming substantial time without having any sort of grievances against the police.

12. In the aforesaid background when the evidence of prosecution witnesses have been gone through it is evident that though they tried to suppress the real theme but is found duly exploded. The glaring example happens to be from the evidence of the father of the alleged victim, Sarblal Rai (PW 5), who during examination-in-chief at para-2, had deposed that nothing had happened before this incident. The motive for occurrence is that Jitu Rai was on visiting terms whereupon he was scolded. His daughter, Shital has not been released by the accused. At an earlier occasion also accused persons enticed her away but she returned back on an effort of the police. During cross-examination at para-4, he had further disclosed that Shital Kumari is residing at place of Jitu Rai but she is not residing under her sweet will. Then had denied the suggestion that



she is residing along with Jitu Rai as his wife. He has shown ignorance with regard to presence of two siblings out of the wedlock. The aforesaid event appears to be intentional one in the background of the fact that he had admitted that his house as well as house of Jitu Rai are adjacent to each other. If she was staying in a house against her will adjacent to her parents’ house, then in that event, she would not have allowed the situation to continue furthermore. In likewise manner, recovery would also been facilitated. Due to non examination of main Investigating Officer, the real picture did not find properly exposed.

13. That being so, the judgment of conviction and sentence recorded by the learned lower court is set aside. Both the appeals are allowed.

14. Since appellants are on bail, they are discharged from its liability.

15. First and the last pages of the judgment be handed over to the learned Amicus Curiae for the needful.

(Aditya Kumar Trivedi, J)

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