

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.262 of 2015

Arising Out of PS.Case No. -12 Year- 2000 Thana -BIHARIGANJ District- MADHEPURA

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Sheo Narayan Mehta S/o Deo Narayan Mehta resident of village - Ramganj, Tola -
Tharha, P.S. Bihariganj, District - Madhepura

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance:

For the Appellant/s : Mr. Parmeshwar Mehta, Adv.

For the Respondent/s : Mr. Z. Hoda, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 15-03-2018

Appellant, Sheo Narayan Mehta has been found guilty for an offence punishable under Section 364/34 of the IPC and sentenced to undergo R.I. for 5 years as well as to pay fine appertaining to Rs.5000/- in default thereof, to undergo S.I. for six months, additionally vide judgment of conviction dated 16.04.2015 and order of sentence dated 21.04.2015 passed by Addl. District & Sessions Judge, IInd, Madhepura in Sessions Trial No.141 of 2000/185 of 2000.

2. Lalan Mehta, PW.6 gave his fardbeyan on 20.01.2000 at about 09:00 AM disclosing therein that on the preceding evening that means to say on 19.01.2000 at about 07:00 PM while he was resting in his house, his brother Rajo Mehta was taking nap at the bungalow. His Bhabhi was cooking, his mother Urmila Devi was sitting. At that very time, he perceived food step and then seen Sheo Narayan Mehta, Subhash Mehta, Kishan Mehta, Shambhu Mehta, Gurudeo Mehta, Raj Kumar Mehta all co-villagers came inside his house, being variously armed and, on the pretext of firearm Sheo



Narayan Mehta caught hold him and dragged him outside his house. His mother, Bhabhi begged but they have not acceded to their prayer. At their moment, 7-8 unknown persons dragging his brother Rajo Mehta from the bungalow came seeing whom, Sheo Narayan Mehta disclosed that as Rajo Mehta has been apprehended on account thereof, he be (informant) let off and accordingly, he was released. Then thereafter, they have taken away his brother Rajo Mehta towards southern-eastern direction. On hue and cry raised by him co-villagers Harilal Mehta, Subhash Mehta, Bisho Mehta and others came who tried to get his brother released from the grip of the accused persons whereupon, they fired as a result of which, villagers withdrew themselves. It has also been disclosed that on account of land dispute, his brother has been kidnapped. Furthermore, it has also been disclosed that at an earlier occasion his father was kidnapped and for that Case No.14/1999 was registered. He made hectic search to trace out his brother but failed whereupon rushed to the police station.

3. After registration of Udakishanganj P.S. Case No.12/2002, investigation followed up during course of which, victim was recovered, his statement was recorded under Section 164 Cr.P.C. other witnesses were also examined and then, completing the investigation, charge sheet was submitted facilitating the trial, meeting with ultimate result, subject matter of instant appeal.

4. Defence case as is evident from mode of cross-examination as well as statement recorded under Section 313 of the Cr.P.C. is that of complete denial. It has also been pleaded that on account of land dispute, this case has falsely been instituted.



However, neither oral nor documentary evidence has been adduced in support thereof.

5. In order to substantiate its, case prosecution had examined altogether eight PWs who are PW.1-Parbati Devi (wife of victim), PW.2-Urmila Devi, PW.3-Subhash Mehta, PW.4-Harilal Mehta, PW.5-Manoj Mehta, PW.6-Lalan Mehta (Informant), PW.7-Rajo Mehta (victim), PW.8-md. Khalli Ujjama (Investigating Officer). Side by side prosecution had also exhibited Ext.1-Signature of informant over fardbeyan, Ext.2-Signature of victim over statement recorded under Section 164 Cr.P.C., Ext.3-Formal FIR. As stated above neither ocular nor documentary evidence has been adduced on behalf of defence.

6. Learned counsel for the appellant confined his submission only with regard to the fact that during course of consideration of evidences of the prosecution witnesses, it is apparent that learned lower court had overlooked the ingredients prescribed for attracting Section 364 of the Cr.P.C. of which, the major ingredients happens to be the kidnapping should be for the purpose of commission of the murder or the victim should be confined so secretly that he should remain under the threat of being murdered which, in the facts and circumstances of the case, is not at all found duly substantiated. Even from the evidence of the victim PW.7, it is apparent that it happens to be either a case under Section 363 of the IPC or, if considered in conservative way, then under Section 365 of the IPC as he himself had disclosed that after covering some distance he was confined in a room secretly where he remained for 10-12 days and then thereafter he was released after



taking to Bihariganj. That being so, there happens to be no fragrance at the end of the victim or at the end of the informant PW.6 or his wife PW.1 or mother PW.2 that kidnapping was for the purpose of commission of murder or putting him under threat of being murdered keeping secretly. Apart from this, it has also been submitted that this occurrence happens to be of the year 2000. Consuming eighteen year having been facing with normal trial being aged about 55 year and so, considering the nature of the evidence that land dispute happens to be the centre point and further, if the evidence is minutely gone through, it is apparent that appellant has got no intention to kidnap rather to settle the dispute indulged in such activity, that being so, lenient view be taken while inflicting sentence modifying the conviction.

7. The learned Additional Public Prosecutor fairly submits that the evidence available on the record did not justify the finding having been recorded by the learned lower court relating to Section 364 of IPC.

8. In order to properly appreciate the submission made on behalf of appellant it looks desirable to go through evidence of PW.7 victim. He had deposed that on the alleged date and time of occurrence while he was resting at his bungalow, 10-12 persons came, caught hold him, took him away. On hue and cry raised by his brother, other family members villagers came, tried to intervene whereupon accused persons fired. Then thereafter, they took him away to secluded place and was confined there and during course thereof, they have taken LTI, signature. Then thereafter, he was released at south to Bihariganj wherefrom came to police station,



narrated him his owe and then, came to his village. Paragraph-5,6 of his cross-examination is on that very score wherefrom it is evident that neither victim PW.7 was put under threat of murder or was kept of secluded place under the threat of murder and that being so, the finding recorded by the learned lower court is not at all found inconsonance with the evidence available on the record. Accordingly, the same needs intervention at this stage. Whereupon, the conviction recorded by the learned lower court for an offence punishable under Section 364 of the IPC is modified under Section 365 of the IPC and in likewise manner, sentence inflicted by the learned lower court as R.I. for five years as well as to pay fine appertaining to Rs.5000/- and in default thereof to undergo S.I. for six months, additionally, is reduced to undergo RI for one year.

9. Appellant is on bail, hence his bail bond is cancelled directing him to surrender before the learned lower court within fortnight to serve out remaining part of sentence, failing which the learned lower court will be at liberty to proceed against the appellant in accordance with law. The period having undergone during course of trial will be set off in terms of Section 428 Cr.P.C. Instant appeal is partly allowed.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

AFR/ NAER	A.F.R.
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