

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.16 of 2009

Arising Out of PS.Case No. -0 Year- null Thana -null District- PATNA

[Against the judgment of conviction and order of sentence dated 22.12.2008 and 24.12.2008 respectively passed by the Additional Sessions Judge, Fast Track Court No.1, Patna, in Sessions Trial No.1268 of 2004/ Tr. No.149 of 2007 arising out of G.R. Case No.4445 of 2003/ Gardanibagh (Shastri Nagar) P.S. Case No.744 of 2003]

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Akash Verma @ Sonu Kumar, son of late Shivnandan Saw, resident of village-Hardayal Tola, P.S.-Mokamah, District- Patna.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

With

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Criminal Appeal (SJ) No. 142 of 2009

Arising Out of PS.Case No. -0 Year- null Thana -null District- PATNA

[Against the judgment of conviction and order of sentence dated 22.12.2008 and 24.12.2008 respectively passed by the Additional Sessions Judge, Fast Track Court No.1, Patna, in Sessions Trial No.1268 of 2004/ Tr. No.149 of 2007 arising out of G.R. Case No.4445 of 2003/ Gardanibagh (Shastri Nagar) P.S. Case No.744 of 2003]

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Rana Singh @ Rana Pratap Singh, son of Anjani Kumar Singh, presently residing at 77F, Anandpuri, Patna, Permanent resident of village-Bairown, P.S.-Simra, District-Aurangabad.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

(In CR. APP (SJ) No.16 of 2009)

For the Appellant/s : Mr. Ajay Kumar, Advocate
Mr. Nand Kishore Prasad, Advocate
Mrs. Archana Kumari, Advocate



For the Respondent/s : Mr. Bal Mukund Prasad Sinha, Advocate
(In CR. APP (SJ) No.142 of 2009)

For the Appellant/s : Mr. Ajit Kumar, Amicus Curiae

For the Respondent/s : Mr. Bal Mukund Prasad Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 22-02-2018

By judgment of conviction and order of sentence dated 22.12.2008 and 24.12.2008 respectively passed by the Additional Sessions Judge, Fast Track Court No.1, Patna, in Sessions Trial No.1268 of 2004/ Tr. No.149 of 2007 arising out of G.R. Case No.4445 of 2003/ Gardanibagh (Shastri Nagar) P.S. Case No.744 of 2003, both the appellants have been convicted under Section 365 Indian Penal Code and sentenced to undergo rigorous imprisonment for five years.

2. Counsel for the appellant, namely, Akash Verma @ Sonu Kumar, is present.

3. No body is present to represent Rana Singh @ Rana Pratap Singh.

4. Mr. Ajeet Kumar, Advocate, is appointed as *Amicus Curiae* to assist the Court on behalf of Rana Singh @ Rana Pratap Singh.

5. Learned *Amicus Curiae* has submitted that appellant, Rana Singh @ Rana Pratap Singh, has spent more than five years in custody, which will be apparent from para 7 of the



memo of appeal. He has further submitted that conviction of the appellant is bad in law. This appeal has been filed to remove stigma of conviction imposed against him.

6. Counsel for the appellant Akash Verma @ Sonu Kumar has stated that his name has not been taken by the victim in his evidence in Court as well as in the statement recorded under Section 164 Cr. P.C. There is no eye witness in this case. Prosecution has not been able to prove charge against him beyond all reasonable doubt.

7. Lower court records have been received.

8. Learned APP has submitted that judgment of conviction and order of sentence has been passed after proper appreciation of evidence.

9. From perusal of the lower court records, it appears that during trial total seven witnesses were examined on behalf of the prosecution. Four witnesses were examined on behalf of the defence. Statement of the victim, Amit Kumar, was also recorded under Section 164 Cr. P. C., which has been marked as Ext.3/1.

10. Allegation in the written report of the informant is that he along with family members lived at *Mohalla Punai Chak* in Sharma Lodge near Pump House. Rana Singh came to house and called his son, Amit Kumar, on 11.11.2003 at about 12 hour. Son of



informant aged about 16 years went with Rana Singh and he did not return. The informant made search and also made contact with his relatives, but could not get any trace of his son. The informant has alleged that accused Rana Singh with help of his friends and associates kidnapped his son, Amit Kumar, for ransom. On the basis of aforesaid written report, police registered case for the offence under Section(s) 364-A Indian Penal Code.

11. The Court below took cognizance against the appellants for the offence under Section(s) 364-A Indian Penal Code. Charges were framed against the appellants for the offence under Section(s) 364-A Indian Penal Code by order dated 07.09.2006. The Court below after conclusion of trial has convicted both the appellants for the offence under Section(s) 365 Indian Penal Code and sentenced them to undergo rigorous imprisonment for five years.

12. PW 1, Ashutosh Kumar, is brother-in-law of the victim Amit Kumar, PW 2, Lallan Kumar Singh, is the brother of the informant, PW 3 Meena Singh alias Devi is the mother of the victim boy, PW 4 Naveen Kumar Singh, is the informant and father of the victim, PW 5 Sumeet Kumar is brother of victim, PW 6 Izazul Haque is the Investigating Officer of the case. Amit Kumar, victim himself has been examined as PW 7.

13. Four witnesses have been examined on behalf of



defence (appellant) Rana alias Rana Pratap Singh. They are DW 1, Kundan Kumar Singh, DW 2, Daya Prakash Sudhanshu, DW 3, Rajesh Kumar, and DW 4 Amit Kumar.

14. From the perusal of evidence of prosecution witnesses, it appears that there is no independent witness in the case. All the witnesses examined in the case are close relative of the victim boy. It further appears from the written report as well as from the evidence of the witnesses that there is no eye witness to the occurrence. All the witnesses are hear say witnesses. They have stated that they have received informant on telephone from police of Kajara P.S. about the recovery of victim boy-Amit Kumar.

15. Victim boy, Amit Kumar, has been examined as PW 7. He has stated in his evidence that on 11.11.2003 at about 12-12.30 PM in the noon he was at his house. His friend, appellant, Rana @ Rana Pratap Singh @ Rana came to his house, called him and he went with him on foot to Tempo Stand, Boring Road. He took breakfast on a fast-food shop. Thereafter, they came to station for purchasing clothes. Accused, Rana, told him that he has not sufficient money to purchase cloth and told the victim that he had sold his mobile to his friend, who lives at Bakhtiyarpur, and asked to accompany him to Bakhtiyarpur, to take the money. Thereafter, they proceeded to Bakhtiyarpur by *Brahmaputra* Express Train, but there



was no stoppage of train at *Bakhtiyarpur*. The train stopped at *Mokama*. Appellant, Rana, took him to Auta Gaht by rickshaw where he met a boy, namely, Amit and asked him about Jhappu. The said Amit told Rana that Jhappu had gone to *Diara*. Thereafter, victim, Rana and Amit reached *Diara* by a boat. They proceeded ahead where a hut was situated. Rana told him to stay there and he will come back. He also told the owner of the hut to keep him there. Thereafter, accused Rana went away. In the night at about 8-8.30PM, one person came there and the victim asked from him about Rana and Amit, then he told that Rana and Amit had gone to Madhurapur. They will come back in the morning. Then the victim stayed whole night but none turned up. In the morning, he told owner of the hut to drop him near the boat. Thereafter, the hut owner dropped him near the boat and he came across the Ganges where he found Amit, Jhappu and one another boy were standing. They told that they have talked with Rana and he is at *Kajara*. They took him to *Kajara* by a Jeep and when they reached in *Kajara* market, he saw a police jeep was coming. The victim jumped from the Jeep on seeing the police jeep and told the police that Sushil Singh, Kallu Singh, Akash Verma, Amit and Jhappu have kidnapped him and are taking him somewhere forcibly. The accused persons started running away from the jeep. Police chased them and apprehended accused Akash Verma



and recovered pistol and cartridges from his possession. Statement of the victim was recorded under Section 164 Cr. P. C. before the Magistrate, which has been marked as Ext.3/1.

16. This witness was cross-examined in the Court below. In para 12 of his cross-examination, he has stated that only one person was with him in the hut and he does not know his name. He has further stated in para 13 that 5-6 hours time was taken in between the journey from his house to hut. He was also cross-examined on behalf of appellant, Akash Verma and in para 17 he has stated that when he proceeded from Patna, accused Akash Verma was not with him and he is not acquainted with Akash Verma. He has also stated in his cross-examination that when he went to cross river Ganges, at that time also, Akash Verma was not with him, but he sat on the jeep. Akash Verma was with him in the Jeep. In para 18, he has further stated that Akash Verma never demanded any money from him or from his father.

17. In this manner, from the entire evidence of the victim, who is the only eye witness in the case, it appears that he has not levelled any specific allegation against the appellant, Akash Verma @ Sonu Kumar, of kidnapping him or making demand of ransom. The Trial Court has convicted both the appellants under Section 365 Indian Penal Code.



18. This Court on the basis of the evidence, as discussed above, finds that the prosecution has not been able to prove the charge beyond all reasonable doubt against the appellant, Akash Verma @ Sonu Kumar, (Cr. Appeal (SJ) No.16 of 2009).

19. Accordingly, he is acquitted of the charge levelled against him. He is on bail. He is discharged from the liabilities of his bail bond.

20. So far conviction against appellant, Rana Singh @ Rana Pratap Singh, (Cr. Appeal (SJ) No.142 of 2009), is concerned, the same is affirmed.

21. From the records, it appears that he has already spent the period of conviction in custody. Therefore, he is not required to be sent to custody any further.

22. Cr. Appeal (SJ) No.16 of 2009 is, accordingly, allowed and Cr. Appeal (SJ) No.142 of 2009 is dismissed.

(Sanjay Priya, J)

J.Alam/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	12-03-2018
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