

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.583 of 1994

Arising Out of judgment and order dated 6th October, 1994 passed by learned District and Sessions Judge, Saran at Chapra in Session Trial No. 37/94.

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Arun Kumar Singh, son of Dharnath Prasad Singh, resident of village – Admapur,
P.S. – Veldi, District – Saran.

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant/s : Mr. Mahesh Chandra Verma
Mr. Md.Zeeauddin

For the Respondent/s : Mr.

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CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

C.A. V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date: 19-04-2018

This criminal appeal has been preferred for setting aside the judgment dated 6th October, 1994 passed by learned District and Sessions Judge, Saran at Chapra (hereinafter referred to as the “Trial Court”) in Session Trial No. 37/1994 by which the appellant namely, Arun Kumar Singh has been convicted under Section 363/34 , 364/34 AND Section 120B of the Indian Penal Code and has been sentenced to undergo life imprisonment for the offence under Section 364/34 I.P.C. and five years rigorous imprisonment for each of the offences under Section 363/34 and Section 120B I.P.C.

2. The prosecution case as appearing from the records of the trial court is based on the written complaint/report dated 04.09.1993 (Exhibit-2/1) of one Jay Prakash Singh (P.W.7) who



has alleged that on 29.08.1993 at about 10.00 a.m., this appellant who happened to be the son of co-sharer of the informant took away Tuntun Kumar, son of the informant who was aged about 5½ years only on the pretext of his treatment. It is stated that the co-villager Sikandar Sah (P.W.4) had seen this appellant with the boy on the way at about 11.00 a.m. It is alleged that when the boy did not return in evening, Devanti Devi (P.W.6) who is the mother of the victim boy started searching the boy with the help of the co-villagers. P.W.6 was told by Sikandar Sah (P.W.4) that he had seen the appellant taking away the boy on a bicycle towards Marhaura. This witness Sikandar Sah was also returning to his house from the said route. He informed that the boy Tuntun Kumar laughed on seeing the witness Sikandar Sah. Sikandar Sah claimed that he asked this appellant as to where he was going with the boy on which this appellant informed Sikandar Sah that he was taking the boy to a doctor for treatment. The informant further stated that when his wife got suspicious about the appellant and she developed an apprehension that the boy has been kidnapped, she sent a telegram to the informant on which the informant reached his house on 01.09.1993. He was told about the entire occurrence by his wife, it was further informed that on 31.08.1993 during night hour there was a panchayati in the village where father of the appellant one Suresh Singh and



Bindeshwar Singh both son of Lagan Singh and Lagan Singh son of Babulal Singh, all were present. In the said panchayati the appellant and other persons namely, Suresh Singh, Bindeshwar Singh and Lagan Singh accepted that they had kept the boy concealed somewhere in the house of a relative and they promised that the boy will be handed over within two days. The informant explained that he did not approach the police immediately as for 2 to 4 days he kept on searching and when he got belief that his co-sharers have conspired together and kidnapped the boy who had not returned till date, he went to the police station on 04.09.1993 to lodge the written complaint.

3. On the basis of the written complaint submitted by P.W.7, Jay Prakash Singh, formal F.I.R. was registered giving rise to Amnour (Bheldi) P.S. Case No. 133/1993 under Section 363, 34 of the I.P.C.

4. After investigation, police submitted charge-sheet against all the accused persons and after taking cognizance the record were committed to the court of session. The learned Trial Court having gone through the evidences available on the record found that Sikandar Sah (P.W.4) has clearly stated that he had seen this appellant along with the boy and this fact he had disclosed in presence of the co-villagers immediately when the boy was being searched by his mother. This witness has lastly seen the victim boy with the appellant when this appellant was



taking away the victim boy on his bicycle. He has been supported by the other prosecution witnesses.

5. P.W.8, Suresh Prasad Singh, who is the Investigating Officer of this case has stated in paragraph 13 of his cross examination on behalf of this appellant that the witness Sikandar Sah had told him in course of investigation that he had seen this appellant with the victim boy in the market. He had denied the suggestion of the defence that Sikandar Sah had told him that he had seen the victim boy from some distance, therefore, the Investigating Officer has also supported the statement of witness Sikandar Sah (P.W.4) on this point.

6. Similarly P.W.1 Rameshwar Singh and P.W.2 Sitaram Singh who are the other co-villagers have also stated in their evidence in course of trial that Sikandar Sah had seen this appellant taking away the victim boy and this fact was told by Sikandar Sah in the village when the victim boy was being searched.

7. The learned Trial Court having found that the guilt against this appellant has been proved beyond all reasonable doubt convicted the appellant for the offences under Section 363/34, 364/34 and 120B of the Indian Penal Code and sentenced him to undergo life imprisonment under Section 364/34 of the I.P.C. and imprisonment for five years for the offences under Section 363/34 and 120B of the I.P.C. each.



8. Learned counsel representing the appellant submits that the prosecution witnesses are co-villagers and have supported the prosecution case only due to enmity. It is also submitted that there is a delay of about five days in lodging of the F.I.R. which is not explained and hence the delay is such that it will prove fatal to the prosecution and that the appellant was a juvenile at the time of alleged occurrence.

9. On the other hand, learned Additional Public Prosecutor representing the State submits that in the present case all the witnesses are consistent on the point that the victim boy was last seen with this appellant. The witness Sikandar Sah (P.W.4) was returning to his village and on way he had seen the appellant taking away the victim boy. The said witness Sikandar Sah told this fact immediately when he came to know that the victim boy had not returned and a search was going on for him. The prosecution witnesses have supported the statement of P.W.4 and even Investigating Officer has supported this version of P.W.4. It is submitted that conviction of the appellant is based on clinching materials which were collected in course of trial and hence the judgment impugned in the present appeal need no interference as regards the present appellant. As regards juvenility claim of the appellant it is submitted that the appellant did not bring the school certificate of the school which he first attended to show his juvenility either before the learned trial



court or before this court, therefore, in a case of heinous crime in absence of there being any reliable and cogent evidence regarding age of the appellant, this issue need not be allowed to be taken up.

10. We have carefully considered the submissions made on behalf of the appellant as well as the State. On going through the deposition of P.W.4 Sikandar Sah, we find that this witness has categorically stated about the circumstances under which he had seen the victim boy lastly with this appellant. He has stated that this appellant was taking away the victim boy Tuntun Kumar on bicycle and on his asking this appellant told him that he was taking Tuntun Kumar to the doctor for treatment. This witness reached his house at about 12.00 noon and came out of his house at about 2.00 p.m. At this stage, he heard some people talking that Tuntun Kumar, son of Jay Prakash Singh, is missing. He has named the person Sitaram Singh, Rameshwar Singh and Lalbabu Singh who were talking about the missing of the victim boy. This witness immediately told them that he had seen this appellant taking away the victim boy on a bicycle. We find that Rameshwar Singh and Lalbabu Singh who are P.W.1 and P.W.3 respectively have supported this version of Sikandar Sah (P.W.4) and they have also narrated the fact that they came to know about this from P.W.4. The Investigating Officer (P.W.8) has in course of his cross



examination stated that P.W.4 had narrated him about this fact in course of investigation. A complete reading of the evidences of the prosecution witnesses would show that they are consistent and supporting the prosecution story.

11. The plea of juvenility raised by learned counsel for the appellant in the present case, at this stage, is not based on any reliable and cogent evidence. The alleged occurrence took place on 29.08.1993. In course of his deposition under Section 313 Cr.P.C. on 08.09.1994, the age of the appellant has been recorded as 18 years. The defence did not bring any evidence on the record to prove the correct date of birth or age of the appellant. On record, we find that a school leaving certificate said to have been issued on 19.03.1994 showing the date of admission as 13.11.1992 of the appellant in the school, and the date of leaving the school is mentioned as 21.08.1993, the date of birth mentioned in the certificate is 05.11.1978. The appellant has been shown to have been admitted in the school in Class-X but did not pass 10th Examination. This Exhibit-A was marked with objection. The learned Trial Court found that a Medical Board was constituted who had found the boy (the appellant) in between 17-18 years, he was not placed in the category of juvenile because on the date of occurrence, on 29.08.1993, he was aged more than 16 years old. The appellant was tried as an adult.



12. A perusal of Annexure-A which is the school leaving certificate does not inspire us because even as per Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007, for the purpose of age determination when enquiry shall be conducted by the court or the Board, as the case may be, the date of birth certificate from the school (other than a play school) first attended is required to be brought on the record by way of evidence. The school leaving certificate showing that the appellant was admitted in the school in the month of November 1992 and left the school in the month of October 1993 directly in Class-Xth would not be a proof of age in accordance with the Rule. It is difficult to believe that a student of Class-X will be admitted in a school in November 1992; it is also to be kept in mind that radiological age is said to be between 17-18 years. It is not the case of the appellant that he had not attended the basic school. Even though we are conscious of the judicial pronouncements of the Hon'ble Supreme Court in the case of **Hari Ram and Ors Vs. State of Rajasthan and Ors.** reported in (2009) 13 SCC 211, as regards the plea of juvenility, which may be raised at any stage, in absence of any cogent evidence as regards the age of the appellant and finding that the trial in the present case was concluded and the judgment of conviction was passed in the year 1994 and no reliable evidence in this regard is on record before us, we are unable to accept the plea of



juvility of the appellant in the present case. We do not find any reason to disbelieve the prosecution witnesses.

13. As regards the delay in lodging of the F.I.R., we find that the father of the victim boy was living in Delhi and only on information he reached his village and thereafter he kept on searching the boy. The informant has thus explained the delay in lodging the F.I.R. We do not find any material contradiction in the statement of the prosecution witnesses and there is no reason to take a contrary view from what has been held by the learned Trial Court.

14. We, therefore, upheld the judgment of conviction and sentence awarded to the appellant. This appeal is, accordingly, dismissed. The appellant who is on bail shall surrender forthwith failing which the Superintendent of Police, Saran shall arrest the appellant within a period of seven days from today and shall sent him to jail for undergoing remaining period of sentence.

(Rajendra Menon, C.J.)

(Rajeev Ranjan Prasad, J.)

Rajeev/-

AFR/NAFR	NAFR
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