

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.785 of 2014

Arising Out of PS.Case No. -27 Year- 2009 Thana -RAGHOPUR District- VAISHALI(HAJIPUR)

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Ganesh Ray S/o - Naresh Ray R/o - Village - Malikpur, P.S. - Raghapur, Distt. -
Vaishali.

..... Appellant/s

Versus

The State of Bihar

..... Respondent/s

with

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Criminal Appeal (DB) No. 424 of 2014

Arising Out of PS.Case No. -27 Year- 2009 Thana -RAGHOPUR District- VAISHALI(HAJIPUR)

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Vinod Kumar Ray Son of Bhola Ray, Resident of Village - Rustampur Tinpothia,
P.S. Raghapur, District - Vaishali

..... Appellant/s

Versus

The State of Bihar

..... Respondent/s

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Appearance :

(In CR. APP (DB) No.785 of 2014)

For the Appellant/s : Mr.Dhirendra Kumar Sinha, Adv.
Mr.Yashpal Yadav, Adv.

For the Respondent/s : Ms. S.B.Verma, A.P.P

(In CR. APP (DB) No.424 of 2014)

For the Appellant/s : Mr.Dhirendra Kumar Sinha, Adv.
Mr.Yashpal Yadav, Adv.

For the Respondent/s : Ms. S.B.Verma, A.P.P

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date: 10-07-2018

These two Criminal Appeals have come up for
consideration with a prayer to set-aside the judgment dated



16.05.2014 passed by the 1st Additional Sessions Judge, Vaishali at Hajipur, in Sessions Trial No.127 of 2010 (hereinafter referred to as the 'learned trial court'). By the impugned judgment, the learned trial Court has held both the appellants guilty for the offence under Section 364 (A) of the Indian Penal Code and has, accordingly, sentenced them to undergo rigorous imprisonment for life with a fine of Rs.20,000/- each failing which they will have to undergo additional three months rigorous imprisonment after undergoing the life imprisonment.

2. The prosecution case is based on the written complaint dated 06.05.2009 lodged by one Lala Rai (P.W.7) who alleged that on 05.05.2009 evening his daughter's son (Nati) namely, Chandan Kumar aged about 3 years, was taken away by Praveen @ Pappu who is his neighbour and one Ganesh, Bhagina of Sukhnandan Rai. According to the informant, at about 5 P.M, Ganesh Rai and one Pappu Kumar (tried before Juvenile Justice Board) came to his house, gave biscuit to his Nati, Chandan and took him away but when they did not return by 06:30 P.M, then search was made at the house of Pappu Kumar but did not find Pappu, Ganesh Rai or the boy, Chandan. On suspicion he started search of the boy Chandan, in course of search, the co-villagers Vishundev Rai (not examined), Chulhai Rai (P.W.4), Chokha Rai @ Tripti Narayan (P.W.3), Anjeet



Rai (not examined) and other co-villagers told him that at about 06:00 P.M, Pappu was taking away the boy Chandan on a bicycle towards north side. The informant claimed that he was also informed that Ganesh Rai (the appellant) was also following them on his bicycle.

3. The informant and other co-villagers reached Malikpur in search of the boy Chandan Kumar, they searched Pappu Kumar and Ganesh Rai where they were told by the co-villagers that Ganesh Rai and his friend Pappu who is a resident of village Behrampur had come there with a three years old boy and the boy was kept in the teashop of Ganesh Rai, at the same time, one young man aged about 25 years came there on a motorcycle who was called as Manish. It is further alleged that Ganesh took the boy and sat on the motorcycle which was being driven by Manish, they went towards Rustampur. The informant claimed that he along with the co-villagers went towards Rustampur Ghat and Kachhi Dargah but could not get the whereabouts of the boy. He alleged that at about 10:00 P.M. in the night Pappu informed him over telephone that Chandan had gone in the hand of Ganesh and Manish and now the informant will be required to pay some amount for his release. It is further alleged that at about 11:30 P.M. Ganesh Rai informed that a sum of Rs.1,00,000/- will be the ransom amount for release of the boy Chandan. The informant, therefore, alleged that his Nati, Chandan had been



kidnapped for ransom. He also stated that the name and the address of Manish could not be known to him. The written complaint lodged by P.W.7 gave rise to a formal First Information Report (Ext.5) being Raghapur P.S.Case No.27 of 2009 registered under Section 362 of the Indian Penal Code.

4. After investigation police submitted a charge-sheet against the accused persons. This Court has been informed that Pappu being a juvenile was tried before the Juvenile Justice Board and has been acquitted. So far as these two appellants are concerned, case proceeded against them before the regular Court, cognizance was taken for the offences under Sections 364(A)/34 of the Indian Penal Code and the records were committed to the Court of Sessions for trial. Before the learned trial Court charges were framed against the appellants under Sections 364 (A)/34 of the Indian Penal Code.

5. As many as 8 witnesses were examined on behalf of the prosecution. P.Ws. 1, 2, 3 and 4 are the co-villagers of the informant (P.W.7). Rajesh Kumar (P.W.5) is the nephew of the informant, Sarita Devi (P.W.6) is the mother of the victim boy and daughter of P.W.7 whereas, P.W.8 Kishuni Rai is the Investigating Officer (I.O) of the case.

6. On behalf of the defence one witness, Sitiya Devi has



been examined. Apart from that the defence also exhibited the certified copy of the First Information Report of Raghapur P.S. Case No.04 of 2007 lodged by one of the appellants Vinod Rai against P.W.4. Exts.C and D are the certificates issued by the Sarpanch of Gram Kachahari- Raj Rustampur, Block- Raghapur and Mukhia of the Gram Panchayat- Raj Rustampur, Block-Raghapur respectively on the point that the appellant, Vinod Rai has the only name by which he is known and that he is not known as Manish. Ext.E is the Voter Identity Card of the appellant Vinod Kumar, Ext.F. is the certificate of Bihar School Examination Board, Ext.G. is the original receipt of the registration of appellant with the Bihar School Examination Board and Ext.H. is the Admit Card issued by the Bihar School Examination Board in the name of Vinod Rai.

7. The learned trial Court having examined the evidences adduced on behalf of the prosecution and also the evidences brought on record on behalf of the defence held that the co-accused Pappu had in greed of money sold the victim boy Chandan in the hand of Ganesh Rai (the appellant) and Ganesh Rai sold the victim boy in the hand of Vinod Kumar Rai @ Manish. According to the learned trial Court while it is true that there is no eye-witness to the present occurrence but the evidence of the prosecution witnesses have been able to connect the chain of facts as regards the prosecution case and that the



appellant, Ganesh Rai and Vinod Rai have been seen by the witnesses with the victim boy Chandan Kumar.

8. As regards the identity of Manish (named in the F.I.R) with that of Vinod Rai (the appellant), the learned trial Court held that even though in all the documentary evidences brought on record on behalf of the appellant, there is only name of Vinod Rai and no where he has been described as Manish but it does not mean that Vinod Rai (the appellant) is not known as Manish. The trial Court held that from the evidence of the prosecution witnesses it is proved that Vinod Rai is Manish.

9. We have heard learned counsel representing the appellants in both the cases and learned A.P.P for the State.

10. Learned counsel for the appellants has taken us through the deposition of the prosecution witnesses. It is submitted that there are vital and material contradictions in the statement of the prosecution witnesses as regards the involvement of Ganesh Rai and Vinod Kumar Rai who are appellants before us. Attention of this Court has been drawn also towards the fact that these prosecution witnesses are closely related, therefore, their evidences should be examined with all circumspection and care. Learned counsel submits that in the First Information Report which has been lodged on the



basis of written complaint of P.W.7 it is stated that Pappu had taken away the victim boy on his bicycle. The witnesses are said to have told the informant that Ganesh Rai (the appellant) was also seen going behind the co-accused Pappu.

11. It is submitted that in course of evidence of P.W.1 who is the brother of the informant has stated that on the date of occurrence i.e., 05.05.2009 he heard Hulla that Pappu had taken away Chandan on the pretext of playing but had not returned. On information when P.W.1 reached village Behrampur (village of the informant) he found that many villagers had assembled there and were enquiring from Pappu. This witness says that Pappu told them that he had sold Chandan in the hand of Ganesh Rai of village Malikpur for a sum of Rs.3,000/-. This witness further says that when the villagers caught hold of Ganesh Rai, he told that he had sent the boy through Vinod Rai of Village Rustampur to Terasiya in the hand of Dr. Raju Ram. The villagers and police people went to Terasiya in search of the victim boy but nobody was found there. Learned counsel points out from Paragraph No.6 of his deposition that this witness P.W.1 is not a reliable witness inasmuch as, he has admitted in his cross-examination that his statement was recorded by police after 2-3 days and has admitted that his entire evidence is based on what he came to know during the ongoing search of the boy and in course of enquiries



with respect thereto. Further his evidence in complete contrast with the version of the F.I.R wherein it is stated that at about 10:00 P.M. Pappu had made a telephone call to the informant to say that Chandan had gone in the hand of Ganesh and Manish.

12. So far as P.W.2 Chandrik Ram is concerned, he has stated that when he reached at the Darwaja of Lal Rai (informant), he came to know there that Chokha Rai @ Tripti Narayan (P.W.3) had seen the victim boy was being taken away by Pappu on his bicycle. P.W.2 further says that he had gone to village Malikpur where the mother of Ganesh Rai told the villagers that Pappu had come there with a boy. According to this witness, Pappu met there. Learned counsel submits that the statement of P.W.2 that Pappu met there is a vital contradiction inasmuch as, the case of the informant that Pappu gave him a call at about 10:00 P.M, the informant never claimed that Pappu met him. Referring to Paragraph No.4 of his deposition, learned counsel submits that P.W.2 could not identify the appellant, Vinod Rai and the co-accused Arti Devi (acquitted). Similarly, Chokha Rai @ Tripti Narayan (P.W.3) has stated that he could not identify Vinod Kumar Rai and Aarti Devi.

13. Learned counsel has also drawn the attention of this Court towards the statement of P.W.4 and has stated that P.W.4 has



stated in his deposition that he had gone to the police station with the informant and co-villagers during night hours but their statement was not recorded. This witness however states that the informant Lala Ram had given a written information, on which F.I.R was lodged. He had stated that at the time of writing of written complaint he had suggested the informant to right the name of Vinod because Pappu has said about selling of the victim boy in the hand of Vinod. This witness has further stated that Lala Ram (informant) had not written the complaint in his presence and he had not read the statements made in the written complaint of Lala Ram. Learned counsel submits that the statement of this witness in Paragraph No.8 clearly shows that the prosecution is trying to conceal the earlier version of the informant and has not brought on record the written complaint which was written on 05.05.2009 during night hours when P.W.4 had gone with other co-villagers and informant to the police station. Learned counsel submits that the present written complaint on the basis of which the F.I.R has been lodged is dated 06.05.2009 and it has been submitted before the police on the next day of the occurrence at about 06:15 A.M. It is, thus, submitted that the prosecution is trying to conceal material facts and it is highly surprising that if P.W.4 had suggested the informant to write the name of Vinod Rai (the appellant) under what circumstances the name of Vinod Rai was not



mentioned in the written complaint.

14. Rajesh Kumar (P.W.5) has been shown to be a very important witness in this case. He is nephew of the informant. Learned counsel submits that the conduct of P.W.5 reflecting in the deposition itself is highly doubtful and casts doubt on the veracity of his statement made in course of deposition. This witness had stated that Pappu and Ganesh both had come to his shop, purchased one packet of Parle-G biscuit for Rs.3/- and gave it to Chandan, then they took away Chandan on a bicycle towards western side. According to this witness, Pappu and Ganesh had come to his shop in between 5-6 P.M., he heard about the missing of the boy Chandan at about 07:00 P.M but in course of his cross-examination this witness says that after hearing Hulla that Nati of Lala Ram (informant) is missing, he remained in his shop only and that day he closed his teashop at about 8/9 P.M. This witness is own nephew of Lala Ram (informant). Learned counsel submits that it is highly suspicious that P.W.5 having seen the victim boy being taken away by Pappu and Ganesh in between 5-6 P.M. could not leave his teashop even after hearing Hulla. This witness remained sitting in the teashop till 8-9 P.M. and while P.W-4 says that he had gone with other co-villager to village Malikpur, this witness remains sitting in his teashop, this is not a natural conduct and hence the credibility of this witness seems to be



doubtful. It is further pointed out that P.W.5 had seen Daroga Jee next in the morning at about 8/9 A.M. but in Paragraph No.8 of his deposition, he has stated that Daroga Jee had investigated him after 2-3 days. This witness had, therefore, not gone to the police station to get recorded his statement even though he was an eye-witness on last seen theory. At this stage, learned counsel also draws attention of this Court towards the deposition of the I.O (P.W.8) who has stated that he had received the written complaint from the informant on 06.05.2009 and in course of inspection of the place of occurrence in village- Behamrampur he had investigated the witnesses, Manjar Devi, Harinarayan Rai @ Chokha Rai and Gaurishankar Rai (father of Pappu Rai). It is, therefore, evident that P.W.5 had not come forward with his story and was not even investigated on 06.05.2009. In course of his cross-examination, the I.O has stated that he had not stated in the case diary about teashop in village- Malikpur, he cannot say description of the teashop. In Paragraph No.27 the I.O has stated that in course of investigation no witness told him that Vinod is known as Manish. I.O has clearly stated that even the informant had not said this. I.O has further stated that in course of investigation he did not get any witness saying that anyone of them had seen Vinod Rai taking away the victim boy Chandan Kumar on his motorcycle. No witness told him that he had seen Vinod Rai either on bicycle or on



motorcycle with the accused Ganesh Rai. In Paragraph No.31 he has stated that he could not find any information about the motorcycle which is said to have been used in commission of the offence. In Paragraph No.32 he has stated that the witness Chokha Rai @ Tripti Narayan had not told him that the victim boy was sold in the hand of Manish @ Vinod Kumar Rai for a sum of Rs.3,000/-. He has further deposed that Sarita Devi (P.W.6) had also not told him about the name of 'Vinod'.

15. P.W.6 is the mother of the victim boy who has deposed that the younger brother of Pappu came at about 06:00 P.M and told her that Pappu was asking for Chandan to play, he had taken away Chandan. She has stated that when Chandan did not return she started searching and in the meantime, Pappu came with a bicycle and on asking about the whereabouts of Chandan he told that he had given Chandan to Ganesh and Vinod.

16. Learned counsel submits that according to P.W.6 Pappu came back while the search of the victim boy was still going on and he informed the villagers that Chandan was taken away by Vinod. In her cross-examination she has stated that she had herself seen Pappu taking away Chandan on his bicycle but this witness has not said that she had seen Ganesh going behind Pappu on an another



bicycle. Learned counsel submits that if P.W.6 had seen Pappu taking away Chandan on his bicycle, but did not say that Ganesh was following Pappu, it will be a vital gap in the prosecution case and the chain of circumstances connecting Ganesh and Vinod in the matter of kidnapping of victim boy cannot be said to be complete. Further, the statement of P.W.6 about arrival of Pappu at about 06:00 P.M. is in complete conflict with the deposition of informant and other P.W.s.

17. As regards the evidence of P.W.7 (the informant), learned counsel submits that again there is a vital contradiction in the statement of the informant in course of his deposition. According to the informant, when he found his daughter (mother of the victim boy) searching, he asked her the reasons thereof. It is stated that he was told by P.W.6 (mother of the victim boy) that the boy was not traceable, he was informed by the co-villagers that they had seen Pappu and Ganesh taking away the victim boy on a bicycle. This witness has stated in Paragraph No.3 of his deposition that he along with the co-villagers went first to the house of Pappu where they were told by the father of Pappu that the boy was not dropped there. It is stated that, thereafter, they went to village-Malikpur at the house of Ganesh but Ganesh was not available there. This witness has further stated that the people present there taking tea told them that Ganesh and Pappu along with the victim boy had gone on the motorcycle of



Manish. Learned counsel submits that firstly no independent witness of village Mallikpur has been examined and this part of the evidence of the informant has to be read with the evidence of the I.O where I.O has clearly stated that in course of investigation not a single witness told him to have seen Vinod (the appellant) on bicycle or motorcycle with the co-accused Ganesh and Pappu. Learned counsel submits that this is an attempt by the informant to improve upon the prosecution case.

18. It is submitted by the learned counsel representing the petitioner that on the other hand, the deposition of D.W.1 Sitiya Devi and the various documentary evidence brought on record on behalf of the defence would prove that Vinod Rai (the appellant) is not Manish but the learned trial Court has in Paragraph No.32 of the impugned judgment failed to appreciate evidences adduced on behalf of the defence. Learned counsel submits that the burden to prove that Vinod is Manish was on the prosecution which the prosecution failed to discharge but the learned trial Court has taken a view which cannot be supported in law. It is submitted that the entire prosecution case is based on the confessional statements of the appellant and apart from the confessional statements there is no material at all to connect these appellants with the present case. It is also submitted that in course of the statement under Section 313 Cr.P.C also the attention of the



appellants were not drawn towards the incriminating materials brought by the prosecution against them and, therefore, considering the vital contradictions in the evidence of the prosecution witnesses along with the denial of opportunity to the appellants in course of their statement under Section 313 Cr.P.C, the judgment of the learned trial Court is fit to be set-aside.

19. On the other hand, learned A.P.P for the State has supported the prosecution case and submits that the prosecution witnesses have stated about the involvement of Ganesh and Vinod both in the commission of crime. Pappu had disclosed the name of Ganesh and Manish. It is stated that Manish and Vinod is the same and one person.

20. After hearing learned counsel for the appellants and learned A.P.P for the State and on going through the materials available on the record, we find that in fact, there are vital material contradictions in the statement of the prosecution witnesses. The prosecution witnesses are closely related witnesses and, therefore, their evidences are required to be examined with all care and caution. A perusal of the evidences available on the record on cumulative reading of the same would show that while P.W.6 claims that she has seen Pappu taking away the victim boy on his bicycle, she has not



stated in her deposition that Ganesh (the appellant) was also seen following the co-accused Pappu. If P.W.6 has not named Ganesh in the manner it has been alleged by the other witnesses who are hearsay witnesses only, we are not ready to accept the evidence of the hearsay witnesses. One of the witnesses (P.W.2) has in course of his evidence stated that when he along with other co-villagers went to village Malikpur to see whether Pappu had gone there, Pappu was found there but P.W.6 says that while she was looking for the missing boy and was searching, Pappu came back at 06:00 P.M. and told her that the victim boy had been handed over to Ganesh and Vinod. Her version is totally different from F.I.R in which it is stated that Pappu had given a telephone call at about 10 P.M to the informant. Both the witnesses lack credibility inasmuch as, if Pappu had come back and had stated that he had handed over the victim boy to Ganesh and Vinod then why at the time of lodging of the First Information Report on 06.05.2009, the informant did not mention the name of Vinod, moreover P.W.6 claims that she had seen Pappu taking away Chandan on his bicycle, if it is so, why at the first instance the informant claimed that he came to know about Pappu taking the victim boy on his bicycle through the co-villagers namely, Vishun Dev Rai, Chulhai Rai and Chokha Rai. The informant says that he along with co-villagers reached village Malikpur at about 08:00 P.M. in night in



search of the victim boy as also Pappu and Ganesh. On the one hand, P.W.6 says that Pappu had come back on his bicycle and had told her that the victim boy had been handed over to Ganesh and Vinod but on the other hand, the informant (P.W.7) says that he along with the co-villagers had gone to village Malikpur at about 08:00 P.M. in night in search of not only the victim boy but also the accused Pappu and Ganesh. According to the informant, Pappu had given him telephone call at about 10:00 P.M. in night, apparently the evidence of P.W.6 and P.W.7 are highly contradictory as regards the information furnished by Pappu involving Ganesh and Vinod.

21. Similarly, the evidence of P.W.5 who is non-else but the nephew of the informant is highly doubtful. This witness says that the victim boy was brought to his shop and then biscuit was purchased from his shop which was given to the victim boy and then the accused persons went with the victim boy on the motorcycle. This witness is own nephew of the informant but even after hearing Hulla he remained sitting in his shop till 8-9 P.M. meaning thereby that he did not go in search of the victim boy. He says that he closed his shop only at 8-9 P.M but even then he did not go in search of the victim boy. He did not present himself before the I.O to get recorded his statement when police came to the place of occurrence on 06.05.2009 and only after 2-3 days he was investigated. In Paragraph-13, P.W.5



has stated that on the date of occurrence he did not go to his house which further takes away the credibility of this witness. In Paragraph No.18 of his cross-examination he has categorically stated that he had not told about this occurrence or talked about this with any of his co-villagers. His attention drawn towards the statement made by him before the Superintendent of Police, where he had stated that mother of Ganesh Rai had informed that Pappu and Ganesh had taken away Chandan on the motorcycle and forwarded him to Manish. In our considered opinion, this witness cannot be relied upon.

22. We have also found that the prosecution witnesses have stated particularly P.W.2 that he along with co-villagers had gone to the police station on 05.05.2009 during night hours where their statements were not recorded. It has been stated by P.W.4 that a written complaint was submitted by the informant in the police station, if the written complaint was submitted by the informant during the night hours on 05.05.2009 and the same has not been recorded as the First Information Report, the submission of learned counsel for the appellants that the prosecution is trying to conceal the very first version of the informant has got force and creates a dent in the prosecution case.

23. Apart from the aforementioned contradictions, we



also find that one of the appellants, Vinod Rai had adduced several documentary evidences in form of certificates of Bihar School Examination Board, certificates issued by the Sarpanch and the Mukhia of the Gram Panchayat- Raj Rustampur, in all these documentary evidences the name of Vinod Rai is shown only as Vinod Rai, the prosecution has not been able to bring any material to show that at any point of time, Vindo Rai was known as Manish. Evidence of I.O on this point becomes important when he says that in course of his investigation he could not find any witness who could say that Vinod is known as Manish or Manish is known as Vinod.

24. In ultimate analysis, we find that the learned trial Court has failed to appreciate the evidence available on record. The prosecution evidences are not able to complete the chain of events to reach on a irresistible conclusion that these appellants have committed the offence as alleged and in absence of reliable evidence on the record, conviction of the appellants only on the basis of confessional statement which is not admissible evidence would not be just and proper. We, therefore, give benefit of doubt to the appellants.

25. The impugned judgment of convictions and sentences are, therefore, set-aside and both the appeals are allowed. The appellant Ganesh Rai is directed to be released forthwith, if not



wanted in any other case. The appellant Vinod Rai is on bail. He is, therefore, discharged from the liability of his bail bond.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

Arvind/R.R.Ojha/-

AFR/NAFR	NAFR
CAV DATE	N/A
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