

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.502 of 2003

Arising Out of PS.Case No. -null Year- null Thana -null District- BHABHUA (KAIMUR)

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Mohan Ram, son of Bir Bahadur Ram, resident of village- Gara, Police Station- Kuchila, District- Kaimur at Bhabua.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Pawan Kumar Singh, Advocate

For the State : Mr. Bipin Kuamr, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 14-08-2018

Sole appellant has been convicted under Section 364 of the Indian Penal code and sentenced to undergo R.I. for ten years by judgment and order dated 11.9.2003 passed by Sri R.N. Sharma, 1st Additional sessions Judge, Bhabua in Sessions Trial No.102/44/1995/2003.

2. Prosecution case in short is that it appears that fardbeyan has been lodged on the statement of P.W. 5, Shiv Nayak Ram stating therein, inter alia, that on 21.5.1993 at 8.00 A.M., accused Mohan Ram came to the house of the informant and requested the son of the informant, Sita Ram @ Chauthi Ram to accompany him to village Shiwonpur maternal villager of the accused Mohan Ram in connection with Tilak ceremony and both of them went to the village shiwonpur but on 26.5.1993, Mohan Ram returned to his house at



village Garra and when he was enquired upon with regard to where about his son it is stated that he had gone to the house of his maternal uncle at village- Surajpura but even after lapse of 4-5 days, when his son did not return some suspicion arose and they started searching a boy but he could not be traced during search. The informant and his brother went to the house of his relation and house of the maternal uncle of boy at Surajpura but he was not traced there and also enquired from the father and uncle of accused the appellant Mohan Ram but his son did not return and as such he lodged a sanha before the Officer-in-charge Kuchhila Police station on 4.7.1993 but police did not take any action. It is also said in the F.I.R. that there was dispute in between the parties for flow of drainage water and it appears that due to such dispute the victim boy was kidnapped and ultimately, an F.I.R. was lodged on 7.8.1994 narrating the entire incidents.

3. On the basis of the aforesaid statement, Kuchhila P.S. Case No.16 of 1994 was instituted under section 364 of the I.P.C. On investigation, charge sheet has been submitted and cognizance was taken and case has been committed to the court of Sessions which ultimately came to the file of Sri R.N. Sharma, 2nd Additional Sessions Judge for trial and disposal. During trial, charge under Section 364 I.P.C. was prepared against the appellant.



4. In order to establish its case, prosecution has examined altogether seven witnesses, they are P.W.1, Khedu Ram, declared hostile, P.W.2, Tilak Ram, uncle of the victim, P.W.3, mother of the victim, P.W.4, Sumitra Devi, wife of P.W.2, P.W.5, Sheonayak Ram, the informant, P.W.6, Inari Devi, Bhabho of the informant and P.W.7, Alwarish Khan, advocate clerk. On behalf of the prosecution, signature on fardbeyan has been marked as Ext.1 and F.I.R. has been marked as Ext.2.

5. It appears that on behalf of the defence, no oral or documentary evidence has been adduced and their defence is of innocence and false implication.

6. Learned trial court has convicted the appellant under Section 364 of the I.P.C. and sentenced the appellant to undergo R.I. for ten years.

7. Learned counsel for the appellant has assailed the judgment on the ground that in this case that the appellant has taken the boy on the plea of taking him to "Tilak" ceremony, which is held in the house of maternal uncle at Shiwonpur but there is absolutely no evidence on record that the aforesaid misrepresentation was with a view to murder the boy or at that time, there was intention of the appellant that the boy shall be murdered and as such ingredients of Section 364 I.P.C. is not made out, hence conviction of the appellant



is not sustainable in the eye of law.

8. On the other hand, learned counsel for the State has supported the judgment of guilt on the ground that the evidence are consistence on record to show that the boy has been taken away by the appellant Mohan Ram and Mohan Ram had taken to the house of maternal uncle and thereafter, Mohan Ram returned but the victim did not return and no explanation has been given by Mohan Ram and as such the conviction of the appellant is just and proper and does not require any interference by this Court.

9. In the background of the submission of the parties, on perusal of the evidence, it appears that in this case, P.W.1 is declared hostile and P.W.5 is the informant and father of the victim and evidence of P.W.5 disclosed that he was at his Khaliyan and when at 1.00 P.M., he came and asked about his son, his wife disclosed that appellant came and taken Chauthi Ram in the “Tilak” ceremony. The appellant assured that his son will come. This witness has been cross examined also and nothing has come in cross examination to doubt the prosecution story. The other witnesses P.W.3 the mother of the victim and P.W.2 is the uncle of the victim and P.W.6, the wife of P.W.2 and their evidence is also consistent that the appellant came and took the victim in connection with “Tilak” in his maternal uncle and he did not return. The evidence of P.W.3 further shows that the



appellant and victim had friendship and however, the evidence shows that the victim is traceless. Considering the above evidence, it appears that the evidence is consistent that the boy has gone along with the appellant Mohan Ram and Mohan Ram had taken on the pretext having “Tilak” in the house of his maternal uncle and that shows that the boy has been taken by the appellant on the plea of a “Tilak” in the house of maternal uncle but it appears from perusal of the record that there is absolutely nothing in the prosecution evidence to show that the appellant has any animosity or any ill will against the victim or his family members, though it is alleged that there was dispute with regard to drainage, however, the evidence clearly shows that both Mohan Ram and abducted victim had good relationship between them and the appellant has also taken food at the house of the informant and all these facts go to show that there may be a misrepresentation but the aforesaid misrepresentation was not with a view to murder the Sita Ram @ Chhauthu Ram or at the time of victim taking away, appellant has any intention to cause his death.

10. For establishing a case under section 364 I.P.C., the prosecution has to prove firstly that there was misrepresentation and secondly that particular misrepresentation was with an intention to murder. In the present case though there is evidence that the abducted person was taken by appellant but evidence does not show



that at the time of abduction, appellant was carrying an intention to murder him rather the evidence shows that relationship between appellant and abducted person was cordial.

11. In such a situation, it appears that prosecution has failed to establish the charge under Section 364 I.P.C. against the appellant beyond all reasonable doubt. Hence, appellant is entitled to benefit of doubt.

12. Accordingly, this appeal is allowed and the impugned judgment and order are set aside. Appellant is on bail. He is discharged from the liability of his bail bonds.

(Vinod Kumar Sinha, J)

N.H./-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	27-08-2018
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