

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.501 of 2014

Arising Out of PS. Case No.-25 Year-2010 Thana- DANAPUR District- Patna

Bachcha Jee, Son of Ramanand Das ,resident of village - Ramjichak
Bataganj, P.S. Digha, District - Patna

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

Criminal Appeal (DB) No. 397 of 2014

Arising Out of PS. Case No.-25 Year-2010 Thana- DANAPUR District- Patna

Pramod Kumar Chaudhary Son of Lalan Chaudhary, Resident of Nasriganj
Chayan Tola, Police Station - Danapur, District - Patna

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

Criminal Appeal (DB) No. 484 of 2014

Arising Out of PS. Case No.-25 Year-2010 Thana- DANAPUR District- Patna

Mithilesh Kumar @ Mithlesh Kumar, Son of Vijay Ram, Resident of
Nasriganj Chayan Tola, Police Station - Danapur, District - Patna

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

Criminal Appeal (DB) No. 441 of 2014

Arising Out of PS. Case No.-25 Year-2010 Thana- DANAPUR District- Patna

Jawahar Lal Rai, S/o Late Ram Dhyan Rai Resident of Village Nasiriganj,
Chain Tola, Police Station Danapur in the District of Patna.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s



with
Criminal Appeal (DB) No. 466 of 2014
Arising Out of PS. Case No.-25 Year-2010 Thana- DANAPUR District- Patna

Saurabh Kumar S/o Late Surendra Kumar R/o Azadnagar, P.S. Maner, District Patna.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellants	: Mr. Radha Mohan Singh, Mr. Sunil Kumar, Adv.
For the State	: Mr. Ajay Mishra, A.P.P. Dr. Mayanand Jha, A.P.P. Mr. S.C. Mishra, A.P.P.
For the Informant	: Mr. Rohit Kumar.

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
and
HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA
C.A.V. JUDGMENT
(Per: HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA)

Date : 09-03-2018

All the above appeals have arisen out of judgment of conviction dated 22.04.2014 and order of sentence dated 28.04.2014 passed by the learned Additional Sessions Judge-I, Danapur in Sessions Trial No. 520 of 2011 arising out of Danapur P.S. Case No. 25 of 2010 corresponding to G.R. No. 197 of 2010, whereby and whereunder the above named appellants have been convicted for the offence punishable under sections 364 and 120(B) of the Indian Penal Code and have been sentenced to undergo Rigorous Imprisonment for life and also to pay a fine of Rs. 10,000/- (Ten thousand) each for the



offence under sections 364 and 120(B) of the Indian Penal Code. In default of payment of fine, they have further been sentenced to undergo Rigorous Imprisonment for a period of six months.

2. The prosecution case, as per written report of the informant/Surender Bhagat, is that his third son namely Chandu Kumar, was a student of Class-X in D.A.V., High School, Danapur. On 28.01.2010 at about 07:00 P.M., the appellant Saurabh Kumar came at his residence and took away his son Chandu Kumar towards road side. The informant also proceeded from his house for taking some house hold goods and he saw the appellant Saurabh Kumar taking away his son on main road of Nasriganj, where other accused persons namely, Jawahar Lal Rai, Bimal Gope, Pramod Chaudhary, Baiju Kumar, Mithilesh Kumar, Paljee, Amit Kumar and Bachcha Jee were present from before. They took his son towards East. Thereafter, the informant returned to his house, but when till late night his son did not return, he went to the rented house of Saurabh Kumar, which was found locked. The informant and his family members made search, but his son could not be traced out. Informant has expressed his belief that the accused persons, including these appellants, with intention



to kill his son, have kidnapped him, because all the accused persons are criminals and there is admitted land dispute between the informant and the accused Jawahar Lal Rai and Bimal Gope.

3. On the basis of the aforesaid written report of the informant/P.W. 5 Surendra Bhagat, Danapur P.S. Case No. 25 of 2010 was instituted for the offence under section 364/34 of the Indian Penal Code. After investigation, the Police has submitted the charge-sheet under section 364/120(B)/34 of the Indian Penal Code against the appellants namely, Jawahar Lal Rai, Pramod Kumar Chaudhary, Mithilesh Kumar, Bachcha Jee and Saurabh Kumar and for rest of the accused persons the matter remained pending. Thereafter, cognizance has been taken and the case has been committed to the Court of Sessions Judge on 25.02.2011. On 17.08.2011, charges were framed under sections 364/34 & 120(B) I.P.C. against all the accused persons.

4. During trial, the prosecution has examined altogether 8 witnesses. P.W.1/Jhimi Rai, P.W. 2/Chandeshwar Bhagat, P.W. 3/Chandan Kumar, both sons of the informant, P.W.4/Harendra Prasad @ Harendra Bhagat, brother of the informant, P.W. 5/Surendra Bhagat, who is the informant of the case, P.W.6/Lalita Devi, who is the wife of the informant and



mother of the victim, P.W.7/Dinesh Bhagat, brother of the informant and P.W.8/Prabhat Kumar Sinha, who is the Investigating Officer of this case.

5. In order to establish the charges, the prosecution has proved the following documents as Exhibits :-

Written Report (Exhibit-1), Endorsement on the written report (Exhibit-1/1), F.I.R. (Exhibit-2), Confessional Statement of Saurabh Kumar (Exhibit-3), Confessional Statement of Pramod Kumar Chaudhary (Exhibit 3/1), Confessional Statement of Mithilesh Kumar (Exhibit-3/2) and the Protest Petition (Exhibit-4).

6. The statements under section 313 Cr. P.C. were recorded, in which appellants have denied the allegation.

7. Defence has examined 2 witnesses. D.W. 1/Sumit Kumar and D.W. 2/Umeshwar Prasad. Apart from that, some documentary evidence have also been adduced on behalf of the defence. The certified copy of order dated 30.01.2010 and 01.02.2010 of Misc. Case No. 11 of 2010 (Exhibit-A), Certified copy of the judgment of Title Suit No. 686 of 1988 passed by Sub-Judge-III, Danapur (Exhibit-B), Certified copy of Decree of Title Suit No. 686 of 1988 of Sub-Judge-III, Danapur (Exhibit-B/1), Certified copy of order sheet dated 30.08.1995 of T.S. No.



121 of 1995 (Exhibit-C), Certified copy of deposition of Jawahar Lal Rai in T.S. No. 686 of 1988 (Exhibit-D), Petition dated 30.01.2010 filed under the signature of Sumit Kumar (Exhibit-E), Receipt of information slip by Santosh Kumar from the Principal of D.A.V., High School, Danapur (Exhibit-F), Certificate issued by Ward Commissioner dated 06.07.2012 (Exhibit-G) and Caste Certificate (Exhibit-H).

8. Learned counsel appearing on behalf of the appellants submits that there is no legal evidence against the appellants of hatching conspiracy for committing the alleged offence. The occurrence is alleged to have taken place on 28.01.2010 but the present case has been instituted on 30.01.2010 without there being any explanation. The informant (P.W. 5) in his evidence has admitted that the written report was prepared after due consultation among the family members.

9. Learned counsel further submits that the learned trial Court has passed the order under appeal by giving undue weight to the testimony of the witnesses, who are all chance/interested witnesses, as they have given an unimaginable picture of the occurrence. As a matter of fact, none of the witnesses has seen the occurrence. They are only said to be last seen with the deceased. Further, no motive has been attributed



against these appellants for committing such an offence. Learned counsel further contends that the learned trial Court has failed to appreciate that the arrest of the appellants on the night of 29.01.2010, as is evident from Exhibit-E, casts serious doubt about the conduct of the prosecution and the Police, as also the fact that there is admitted land disputed between the parties.

10. In the background of the aforesaid submissions, learned counsel submits that the impugned judgment of conviction and the order of sentence is illegal, vitiated, unsustainable in the eye of law and is fit to be set aside.

11. Learned Additional Public Prosecutors appearing on behalf of the State as well as the learned counsel appearing for the informant opposes the prayer of the appellants.

12. We have heard the submissions, as advanced on behalf of the parties and have also perused the evidences available on record. For better appreciation of the matter, this Court feels it necessary to examine the evidence of prosecution witnesses.

P.W. 1/Jhimi Rai has stated that he saw only Saurabh, Bimal and Rambrikch standing on the road. Later on, he got the information that Chandu has been kidnapped and Saurabh has been arrested. Besides that, he does not know



anything. The Police was recording statement on the road. He also gave his statement. Besides his statement, he did not know whose statements was taken by the police.

P.W. 2/Chandeshwar Bhagat has stated that he was standing on the road. He saw Saurabh taking away Chandu from his house. All accused persons, who were standing there from before, were following both of them. Thereafter, this witness came back to his house.

P.W. 3/Chandan Kumar has stated that he was standing at the Gumti shop in his street. Saurabh called Chandu and took him away. All accused persons were standing on the road. They took away Chandu towards East. Father lodged the case. Saurabh was arrested and he told the Police that he has killed Chandu. Dead body of Chandu has not been recovered. He also says that the house of Jawaharlal Rai is adjacent to his house.

P.W.4/Harendra Prasad @ Harendra Bhagat has stated that Saurabh called Chandu and took him away. All accused persons were standing on the road. They took away Chandu towards East. Thereafter, this witness came back to his house. Later on, he got information that Chandu has been killed and his dead body has been thrown away.



P.W 5/Surendra Bhagat, informant of this case, has reiterated his statement made in the First Information Report. He also said that when his son did not return even after two days, he doubted that the accused persons have killed his son and threw his body in the river Ganges. Then on 30.01.2010, he lodged the first information report. He also said that there was dispute with accused Jawahar regarding one feet of land and he had threatened him. He also stated that on seeing Chandu going with the accused, no doubt was raised in his mind. He further stated that he searched for Chandu at his relatives in Patna and Patnacity. He admitted that the Title Suit No. 686 of 1988 was decided against him and he cannot say as to whether Jawaharlal Rai had given his evidence against them or not. This fact can be stated by his father. This witness has denied that Jawaharlal has been named in this case because he had given evidence against them.

P.W. 6/Lalita Devi, wife of the informant, has said that Saurabh called Chandu and took him away. Later on, she came to know that accused persons have killed her son.

P.W. 7/Dinesh Bhagat has stated that he saw Saurabh and Chandu taking some articles from the Gumti Shop. Accused persons were talking with each other. In the morning,



he came to know that Chandu did not return to his house then first information report was lodged. The reason of the occurrence is land dispute with Jawahar.

13. Considering the facts and circumstances of the case, the materials available on record and submissions advanced on behalf of the parties, this Court finds that the submissions advanced on behalf of the appellants have substance and agrees with the same. In the present case, the son of the informant was kidnapped at 07:00 P.M. in the evening on 28.01.2010, but the First Information Report was lodged at 10:00 P.M. in the night on 30.01.2010, after delay of about two days, and the same reaches to the Court of C.J.M. on 01.02.2010, after delay of about a day. In this connection, prosecution has not given any explanation as to why First Information Report was lodged after delay of two days and why the same reached to the Court after delay of one day. This fact in itself makes the entire prosecution case doubtful.

14. Further, all the witnesses are relatives of the informant, except P.W. 1, who takes the names of Saurabh, Bimal and Rambriksh only. He shows his unknowingness about the occurrence. He states that the Police was taking statements on the road. He also gave his statement.



15. It has been specifically mentioned in the First Information Report that all the accused persons are criminals and the informant has land dispute with accused Jawahar and Bimal, but it is quite surprising that the informant and other witnesses even after seeing Chandu going with the accused persons neither felt any doubt nor tried to stop him. When Chandu did not return to his house in the night, even then they did not inform the Police. Further, as per the F.I.R., when the son of the informant did not return to his house in the night, they go to the house of accused Saurabh in his search and finds the house locked, but they do not search in the houses of other eight accused persons, although the accused Jawahar, is a neighbour of the informant and their houses are adjacent to each other.

16. When it was clear that all the accused persons had kidnapped the son of the informant with intention to kill then why for two days they kept on searching for him in their relatives houses at Patna and Patna City.

17. The prosecution has not been able to explain that when the First Information Report was lodged at 10:00 P.M., in the night of 30.01.2010, then why accused Saurabh was arrested by the Police on 29.01.2010 as is evident from Exhibit-E.



18. In the matters of kidnapping, criminal antecedent of the accused is an important factor, but in the present case, investigating officer has admitted that the accused persons have no criminal antecedent. Besides that, witnesses have also stated specifically that all the accused persons do the work of decoration, electric fittings and flowers and the accused Jawahar is a stamp vendor in Danapur, Civil Court.

19. After going through the entire evidence, we are of the opinion that prosecution has not been able to prove its case beyond all reasonable doubt. The benefit of doubt should be given to the appellants and accordingly they are given the benefit of doubt. As such, the judgment of conviction and sentence, in the present case, is required to be interfered with.

20. Accordingly, these appeals are allowed. The judgment of conviction dated 22.04.2014 and order of sentence dated 28.04.2014 passed by the learned Additional Sessions Judge-I, Danapur in Sessions Trial No. 520 of 2011 arising out of Danapur P.S. Case No. 25 of 2010 corresponding to G.R. No. 197 of 2010 are, hereby, set aside.

Since the appellants namely, Bachcha Jee (Cr. Appeal (DB) No. 501 of 2014, Pramod Kumar Chaudhary (Cr. Appeal (DB) No. 397 of 2014) and Mithilesh Kumar @



Mithlesh Kumar (Cr. Appeal (DB) No. 484 of 2014) are in custody and their conviction and sentence have been set aside, it is, hereby, directed to release them forthwith, if not wanted in any other case.

Further, since the appellants namely, Jawahar Lal Rai (Cr. Appeal (DB) No. 441 of 2014 & Saurabh Kumar (Cr. Appeal (DB) No. 466 of 2014) are on bail, as such, they are discharged from the liabilities of their bail bonds.

(Arvind Srivastava, J)

(Rakesh Kumar, J) I Agree.

(Rakesh Kumar, J)

mcv/-

AFR/NAFR	NAFR
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