

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.106 of 2013

Arising Out of PS. Case No.-253 Year-2010 Thana- SASARAM NAGAR District- Rohtas

Ravi Shankar Choubey S/o Late Ram Nath Choubey R/o Village- Samahuta,
P.O.- Sadokhar, P.S.- Chenari, District- Rohtas

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Vikramdeo Singh
For the Respondent/s : Mr. Z. Hoda (App)

CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL JUDGMENT

Date : 29-10-2018

Heard learned counsel for the appellant and learned
APP for the State on this Criminal Appeal.

2. This appeal has been preferred against the judgment and order of conviction dated 24.01.2013 and order of sentence dated 29.01.2013 passed by learned 1st Addl. Sessions Judge, Rohtas at Sasaram in Sessions Trial no. 234 of 2010, arising out of Sasaram (Model) P.S. Case No. 253 of 2010 whereby the learned trial court acquitted the accused, Santosh Pandey of the charge levelled against him and convicted the accused Ravi Shankar Choubey for the offence punishable under Section 365 of the Indian Penal Code and sentenced him to undergo R.I. for four years and also slapped him with a fine of Rs. 5000/- and in case of default of payment of fine to further undergo S.I. for two months under the



aforesaid Section.

3. The factual matrix of the case is that Sasaram (Model) P.S. Case No. 253 of 2010 was instituted under Section 364A of the Indian Penal Code against unknown miscreants on the basis of written report of Krishna Bihari Pathak S/o Late Satyanarayan Pathak with the allegation, in succinct that son of the informant, namely, Vindychal Pathak had gone to Modern Public School located at Santoshi Path at Sasaram on 19.03.2010 to appear in examination, but he did not regress to the house after examination. On the same day at around 08:39 PM, there was a call on his mobile phone from mobile no. 8877493357 informing that his son is in his custody and asking him to manage the money till Monday extending threatening of dire consequences to his son. Again on 20.03.2010 at around 08:13 AM, there was a call from the same mobile number demanding ransom of Rs. 4 lacs till Monday warning him not to become smart. It is claimed by the informant that his son has been kidnapped for ransom by some unknown miscreants.

4. The aforesaid case was investigated by the police and on conclusion of the investigation, I.O. submitted charge-sheet under Section 364A/34 of the Indian Penal Code



against Ravi Shankar Choubey and Santosh Pandey keeping the investigation pending against other accused persons.

5. On receiving the charge-sheet and the case diary and perusing the same, the learned Magistrate took cognizance of the offence and committed the case to the court of sessions and after commitment and on transfer finally the case came in *seisin* of the learned 1st Addl. Sessions Judge, Rohtas at Sasaram for trial.

6. Charge against accused Ravi Shankar Choubey and Santosh Pandey was framed under Section 364A/34 of the Indian Penal Code. Charge was read over and explained to them by the court to which they pleaded not guilty and claimed to be tried.

7. To substantiate its case, in ocular evidence, the prosecution has examined altogether twelve prosecution witnesses namely, Abhiyukti Kumar as PW-1, Bansidhar Prasad as PW-2, Sanjay Kumar as PW-3, Anjani Kumar Singh as PW-4, Jitendra Kumar as PW-5, Sonu Rai as PW-6, Butan Tiwari @ Prince as PW-7, Surendra Tiwari as PW-8, informant Krishan Bihari Pathak as PW-9, victim Vindhyachal Pathak as PW-10, I.O. Md. Kamal Akhtar as PW-11 and Constable no. 18 Bindeshwari Prasad as PW-12. Out of the



aforesaid witnesses, PW-4, PW-6 and PW-8 turned hostile while PW-12 (constable Bindeshwari Prasad) happens to be formal witness of the case and PW-5 (Jitendra Kumar) happens to be Judicial Magistrate 1st Class, Sasaram, who had recorded the statement of the victim under Section 164 Cr.P.C. Prosecution has also filed and proved several documents in the case by way of documentary evidence.

8. The statement of the accused was recorded under Section 313 of the Code of Criminal procedure. The case of the defence is complete denial of the occurrence claiming himself to be innocent. The accused has neither adduced any ocular nor documentary evidence in buttress of his case.

9. After hearing the parties and perusing the record, the learned trial court passed the impugned judgment and order of conviction and sentence as detailed in the earlier paragraph.

10. Being aggrieved and dissatisfied with the aforesaid judgment and order of conviction and sentence, the convict has preferred the present Criminal Appeal.

11. The point for consideration in this case is, as to whether the prosecution has been able to bring home the



charge levelled against the appellant beyond all reasonable doubts or not.

12. It is submitted by learned counsel for the appellant that there is no eye witness of the occurrence. The witnesses of the seizure of mobile phone from the rented room of the petitioner has not supported the factum of aforesaid recovery and seizure. It is further submitted that though the occurrence is said to be of Baba Chowk which is busy place and number of vehicles and persons always passes through the aforesaid place, but none of the independent witness has been examined by the prosecution in the case. The informant also does not happen to be eye witness of the occurrence. There is vital contradiction between the statement of the victim given before the Magistrate under Section 164 Cr.P.C. and that given before the court regarding identification of the accused in the occurrence, manner of occurrence etc. Thus, the prosecution has utterly and miserably failed to substantiate the prosecution case against the appellant beyond all reasonable doubt by adducing convincing, trustworthy and reliable evidence. Hence, the impugned judgment and order of conviction and sentence passed against the appellant by the learned trial court is liable to be set aside and appellant is



entitled to be acquitted.

13. On the other hand, learned APP advocating the correctness and validity of the impugned judgment and order of conviction and sentence submitted that though there is no eye witness of the occurrence and informant also does not happen to be eye witness of the occurrence, but the victim was recovered from the rented room of the petitioner along with the petitioner where he was kept wrongfully confined by the petitioner after kidnapping and the victim and I.O. in their respective statements have supported the recovery of the victim from the rented room of the petitioner along with the petitioner and learned trial court correctly appreciating the facts and evidence on record has rightly passed the impugned judgment and order of conviction and sentence which is liable to be upheld and this appeal is shorn of merit and is liable to be dismissed.

14. From perusal of record it appears that Nokia mobile having SIM no. 9470661337 was recovered from the room of the appellant before the seizure list witnesses, namely, Anjani Kumar Singh and Sonu Rai, but the aforesaid Anjani Kumar Singh (PW-4) and Sonu Rai (PW-6) have turned hostile and they have not supported the factum of recovery



and seizure of aforesaid mobile from the possession of the appellant.

15. From perusal of seizure list marked as Ext-2, it appears that mobile having SIM number recovered from the possession of the appellant is not matching with the SIM number as given by the informant in his written report by which the ransom call was given to him as the number of the SIM of mobile seized from the possession of the appellant is 9470661337 while ransom call was given from mobile having SIM number 8877493357. Though, I.O. Md. Kamal Akhtar PW-11 has stated that as per the further statement of the informant, ransom was also made from mobile no. 9031221494, but the aforesaid number is also not matching with the mobile with SIM number seized from the possession of the appellant. Moreover, I.O. (PW-11) in paragraph 22 of his cross-examination has stated that SIM of the mobile by which the ransom call was made, as per the further statement of the informant, was not recovered from the possession of Ravi Shankar Choubey. Moreover, from perusal of the call details report (CDR) of the relevant mobile number by which the call was made at the relevant time furnished by the prosecution marked as Ext-9, it appears that mobile number



seized from the possession of the appellant is not adumbrated in the said report.

16. As per the account of the victim Vindhyachal Pathak (PW-10) made in paragraph 10 of his cross-examination he was kidnapped from Baba Chowk located at around ½ Km. from his school. Said Baba Chowk is a busy place where number of vehicles and persons passes through. The I.O. Md. Kamal Akhtar PW-11 has also stated in paragraph 23 of his cross-examination that the aforesaid place of occurrence is a busy road through which the four wheelers and two wheelers always passes, but none of the independent witness has come in corroboration of the aforesaid occurrence of kidnapping of the victim by the appellant. Informant PW-9 also does not happen to be eye witness of the occurrence and he has also not named the appellant in the occurrence. He has filed the written report against unknown miscreants. In paragraph 3 of his cross-examination, he has stated that he had not seen the occurrence of kidnapping of his son. He has also stated in the said paragraph that the victim was not recovered before him. The ransom was not demanded from him face to face and he does not know as to whom the mobile number, by which the ransom call was made is hailing. Though the victim



PW-10 has stated in paragraph 1 and 2 of his examination-in-chief that the police had recovered him from the house and also apprehended two male and one lady accused who were keeping watch on him from the said house while another accused managed to escape. Police took all the accused to the P.S. and he came to know about name of the accused during the course of their interrogation by the police at P.S. as Ravi Shankar Choubey, Bak Dubey @ Vachan Dubey and Shanti Devi @ Shasi Devi and in paragraph 28 of his cross-examination, he has stated that he did identify his kidnapper by their face and not by name. But, in paragraph 6 of his statement recorded by the Magistrate under Section 164 Cr.P.C. marked as Exhibit-3 he has stated that police recovered two male and one lady from the house where he was made captive, but he had left the aforesaid lady and old fellow and took him and one accused to the P.S. (Model) Town. In the said statement he has not stated about identification of the appellant during the course of his interrogation by the police at the P.S. rather has stated in paragraph 7 of his aforesaid statement that the police kept detained him and the accused apprehended from the house overnight in the Hazat of the P.S., who was Ravi Shankar Choubey. He identified Ravi Shankar



Choubey when his brother came to meet him in the Hazat. Thus, there appears to be vital contradiction between the statement of the victim recorded under Section 164 Cr.P.C. and that recorded before the court regarding identification of the appellant. But against all odds, as per the statement of the victim recorded under Section 164 Cr.P.C. and given by him before the court, he was recovered from the house along with the appellant Ravi Shankar Choubey and I.O. (PW-11) in paragraphs 6 and 8 of his examination-in-chief has stated that he recovered the victim from rented room of Ravi Shankar Choubey and also apprehended the accused Ravi Shankar Choubey. The seizure list marked as Ext-2 also indicates that the copy of the seizure list prepared regarding seizure of the mobile from the room of the appellant was given to him and it bear his signature. The defence has utterly failed to explain as to how the victim came in the rented room of the appellant and was recovered along with the appellant from the said room.

17. In the aforesaid facts and circumstances of the case, I find and hold that the prosecution has succeeded to substantiate the offence of kidnapping of the victim by the appellant with intention to cause him to be secretly and wrongfully confined in his room by consistent, trustworthy,



convincing and reliable evidence and he has been rightly convicted under Section 365 of the Indian Penal Code by the learned trial court, hence the aforesaid judgment and order of conviction passed by the learned trial court does not warrant any interference by this Court and is accordingly upheld.

18. From perusal of record, it appears that the appellant was aged about 24 years at the time of occurrence and is having no criminal antecedent. He has been facing rigor of the case for a considerable period of time of eight years and has also remained in custody for 2 years 10 months and 22 days. Hence, in the aforesaid facts and circumstances, the sentence awarded by the learned trial court is reduced to the period of custody undergone by the appellant, which in my considered opinion would subserve the ends of justice. Accordingly, this Criminal Appeal is dismissed with the aforesaid modification in the sentence passed by the learned Trial Court.

rohit/-

(Prakash Chandra Jaiswal, J)

AFR/NAFR	NAFR
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