

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.89 of 2009

1. **Babloo Paswan**, son of Satya Narayan Paswan.
2. **Daya Shankar Sah**, son of Rajendra Sah, both are resident of village-Mohammadpur Sube @ Bangri, Police Station Kanti, District-Muzaffarpur.

... .. Appellant/s

Versus

State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Mukund Mohan Jha-Amicus Curiae
For the Respondent/s : Mr. Sujit Kumar Singh-A.P.P.

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

14-12-2018

On account of absence of learned counsel for the

appellants, Sri Mukund Mohan Jha, learned counsel, who is present in Court, has been requested to assist the Court as an Amicus Curiae.

2. Appellants Babloo Paswan as well as Daya Shankar Sah, both have been found guilty for an offence punishable under Section 363 of the I.P.C., but appellant Babloo Paswan has been sentenced to undergo R.I. for two years while appellant Daya Shankar Sah has been sentenced to undergo R.I. for three years vide judgment of conviction dated 17.01.2009 and order of sentence dated 19.01.2009 passed by the Additional Sessions Judge, Fast Track Court No.5th, Muzaffarpur in Sessions Trial No.361 of 2003.

3. Manjit Kumar (PW-15) filed written report on 23.02.2003, disclosing therein that after returning from Muzaffarpur Town on 22.02.2003 at 5.30 P.M., he found his



sister Rima Kumari aged about 14 years missing from his house, whereupon, he indulged in hectic search and during course thereof, he came to know that Surendra Mahto, Daya Shankar Sah and Babloo Paswan took her away at 4.30 P.M. It has also been disclosed that she has been taken away over vehicle of Chandrika Rai on the pretext of getting her treatment by a doctor relating to her ailment. This information was given by the aforesaid Chandrika Rai. He has also stated that during course thereof, they have taken away ornaments as well as cash appertaining to Rs.20,000/-. It has also been disclosed that after leaving Rima, he has gone to the clinic of Dr. R. K. Jha along with his mother and elder sister for check up and seeing their absence at the house, accused persons enticed away his minor sister with ulterior motive.

4. After registration of Kanti P. S. Case No.34 of 2003, investigation was taken up and during course thereof, the victim was recovered, was medically examined, her statement under Section 161 of the Cr.P.C. as well as under Section 164 of the Cr.P.C. were recorded, accused persons were apprehended, witnesses were examined and then thereafter, completing the investigation, chargesheet was submitted facilitating the trial, meeting with the ultimate result, subject matter of instant



appeal. From the judgment impugned, it is evident that all the three accused, that means to say, Surendra Mahto, Daya Shankar Sah and Babloo Paswan were proceeded with and all have been found guilty. Surendra Mahto has been sentenced to as period already undergone (five years nine months) and no appeal at his behest has been preferred. While remaining appellants Babloo Paswan and Daya Shankar Sah put the judgment impugned under challenge.

5. Defence case, as is evident from mode of cross-examination as well as statement recorded under Section 313 of the Cr.P.C. is that of complete denial. Furthermore, it has also been pleaded that no such type of occurrence had ever taken place, but in the background of prevailing animosity, the prosecution party taking the police in collusion, hatching a conspiracy got this case instituted arraying the appellants including Surendra Mahto as an accused. However, neither oral nor documentary evidence has been adduced in defence.

6. In order to substantiate its case, prosecution has examined altogether sixteen PWs, who are PW-1, Rima Kumari, the victim, PW-2, Ram Dayal Mahto, PW-3, Chandrika Rai, PW-4, Bachcha Mahto, PW-5, Sanjay Kumar Ojha, PW-6, Birju Mahto, PW-7, Shiv Shankar Mahto, PW-8, Raj Kumari



Devi, PW-9, Kishori Rai, PW-10, Sukhdeo Rai, PW-11, Yogender Rai, PW-12, Rajender Rai, PW-13, Laxmi Devi, PW-14, Sakal Paswan, PW-15, Manjit Kumar and PW-16, Dr. Sohan Prasad Chaudhary as well as has also exhibited, Exhibit-1, signature of PW-1 over statement under Section 164 of the Cr.P.C., Exhibit-1/a, signature of O/c over formal F.I.R., Exhibit-2, written report, Exhibit-3, medical report. As stated above, neither oral nor documentary evidence has been adduced on behalf of defence.

7. Heard learned Amicus Curiae as well as learned Additional Public Prosecutor. Also gone through the L.C. Record along with the judgment impugned. After hearing rival submissions, it is evident that the crucial question which the Court has to decide is whether the victim was kidnapped or not?

8. PW-1 is the victim herself, she has stated during her examination-in-chief that on the alleged date and time of occurrence while she was engaged in washing cloth and her sister as well as her mother were to Muzaffarpur to see a Doctor, Daya Shankar Sah and Babloo Paswan came and disclosed that your mother is serious, so she has to proceed to Muzaffarpur. They also disclosed that they have received a



telephonic information. They also directed to take money, if any available in the house. When she disclosed that no money is available, then they after breaking lock of her box, took out ornaments as well as cash appertaining to Rs.20,000/-, while he has gone to change dress. Then thereafter, she accompanied them. When they reached near Bagahiya culvert, Surendra Mahto joined. Thereafter, Daya Shankar Sah, Babloo Paswan and Surendra Mahto got her inside a car and travelled up to Bhagwanpur. She inquired about her mother, whereupon all of them took her to Bhagwanpur Chowk and then inside a bus. There, Daya Shankar Sah took out a handkerchief and put over her nose as a result of which, she became unconscious. Daya Shankar Sah, Babloo Paswan got down from the bus. She regained sense after two days and found herself at Jaipur with Surendra Mahto. Surendra Mahto took her to place of his mama where she was kept in kitchen room. She inquired from Surendra Mahto where her mother is, whereupon he replied soon she will meet with her. Her brother and uncle came at Jaipur, took her as well as Surendra Mahto to Muzaffarpur. At Muzaffarpur Railway Station, police came and arrested Surendra Mahto while she came to her house along with her parents. Subsequently, she was medically examined. Her



statement was also recorded by the police as well as her statement was also recorded before the Magistrate, exhibited the same. During cross-examination apart from others at Para-14, had stated that her brother and uncle came at the place of maternal uncle of Surendra Mahto on 23rd. They took them on the same day and returned there from. She accompanied her brother and uncle. She had not disclosed anything regarding the occurrence during midst of way.

9. PW-7 is father, who has stated that the victim Rima Kumari happens to be his daughter. Occurrence is of dated 22.2.2003, his sons Manjit Kumar and Ranjit Kumar reside at Muzaffarpur as were engaged in studying. On the date of occurrence, his wife and daughter has come to Dr. R. K. Jha for treatment leaving behind Rima Kumari at her house. At that very time, Rima was aged about 15 years. When he returned back from his school, he found his daughter missing. During course of search, Chandrika Rai disclosed that Daya Shankar Sah has hired his ambassador, whereupon Surendra Mahto, Babloo Paswan and Daya Shankar Sah took away Rima Kumari on the pretext of critical condition of her mother. They got down near the clinic of Dr. Shabnam at Bhagwanpur. When they failed to locate Rima Kumari, then Manjit Kumar informed the police.



During course of cross-examination, majority of questions happens to be relating to institution of a case by Rajendra Mahto, father of Daya Shankar Sah for kidnapping of his niece wherein he has gone to Jail, which he has admitted. So, father has not disclosed that his son as well as brother had gone to Jaipur to bring the victim nor he has spoken with regard to recovery of the victim. He has not corroborated the informant that informant Manjit had accompanied mother and sister to Dr. R. K. Jha from his place.

10. PW-15 is the informant, who during his examination-in-chief has stated that on the alleged date and time of occurrence, he was at Muzaffarpur at the clinic of Dr. R. K. Jha along with his mother as well as sister Sudha leaving behind the victim as well as his grandmother at the house. When they returned back, they have found Rima missing. During search, they came to know that Surendra Mahto, Babloo Paswan and Daya Shankar Sah enticed her away on the pretext of ailment of her mother. They have also taken away ornaments, cash appertaining to Rs.20,000/-. Then thereafter, he filed written report. Then has stated that his sister was recovered after one and half months. After recovery, his sister had detailed the incident, identified the accused. From the cheet alone, this



witness has also failed to claim that he along with his uncle had gone to Jaipur at the place of maternal uncle of Surendra Mahto wherefrom they carried the victim as well as Surendra Mahto, out of whom, Surendra Mahto was apprehended by the police at Muzaffarpur Station, while all the family members brought the victim to their house. The remaining witnesses that means to say, PW-2, PW-3, PW-4, PW-5, PW-6 and PW-8 have not stated how the victim was recovered and from whose custody, however, stated that victim along with all the accused were seen by them. Uncle of the victim has not been examined. Neither mother nor other sisters have been examined. Furthermore, from the evidence of PW-16, it is evident that he had examined the victim on 04.03.2003. From Exhibit-1, signature of victim over statement under Section 164 of the Cr.P.C., it is evident that same happens to be dated 05.03.2003.

11. So, from the aforesaid evidences, it is crystal clear that victim was available before 04.03.2003. If the prosecution case is accepted, then in that circumstance, there should have been corroboration of the evidence of the victim (PW-1) by her family members at least by PW-7 as well as PW-15 that PW-15 had gone to Jaipur with his uncle to the place of maternal uncle of Surendra Mahto wherefrom victim along with



Surendra Mahto was carried to Muzaffarpur Junction where Surendra Mahto was arrested by the police and the victim was taken away by them. If that part of evidence has not been substantiated by PW-7 as well as PW-15, then in that circumstance, the only source which left was the I.O., who could have, in case examined, divulged how the presence of PW-1 was procured. Due to non-examination of the I.O., the aforesaid theme remained unexplained. The event became suspicious when it is taken together with the evidence of other PWs, more particularly PW-11, who had seen the victim to be in company of Surendra Mahto, over a rickshaw roaming at Muzaffarpur Town on the alleged date and time of occurrence. That being so, the story of kidnapping as propounded at the end of the prosecution, is found duly calcified.

12. Furthermore, when the evidence of PW-7 is gone through, the another circumstance visualizes and that is before institution of this case, father of Daya Shankar Sah namely Rajendra Sah had instituted a kidnapping case against PW-7 and others in which, there happens to be an admission at the end of PW-7 that he had gone to Jail. Then in that circumstance, whether presence of Daya Shankar Sah at the place of PW-7 and asking the victim to accompany on the



pretext of seriousness of her mother, could be believed. In likewise manner, the conduct of the victim, though shown ignorance during course of evidence, but must be knowing that the father of Daya Shankar Sah happens to be responsible for putting her father behind the bar would believe upon his words and would accompany him is an another circumstance.

13. In the aforesaid background, even presence of evidence of witnesses that they have seen the victim along with Surendra Mahto, Daya Shankar Sah and Babloo Paswan, who taken her upto Bhagwanpur Chowk over his car and further, the story so propounded by the PW-1, victim, did not inspire confidence, whereupon, the judgment of conviction and sentence did not justify its prevalence. Consequent thereupon, is set aside. Appeal is allowed. Both the appellants are on bail, hence are discharged from its liability. The first and last page of the judgment be handed over to the learned Amicus Curiae for needful.

(Aditya Kumar Trivedi, J)

Vikash/-

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