

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.1403 of 2017

Arising Out of PS. Case No.-16 Year-2006 Thana- LAUKARIYA District- West Champaran

Heera Lal Kushwaha, Son of Mithu Kushawaha @ Shankar Kushawaha,
Resident of Village- Notanawa, Police Station- Semara (Chiutaha), District-
West Champaran.

... .. Appellant/s

Versus

The State of Bihar.

... .. Respondent/s

Appearance :

For the Appellant/s : Shri Milind Kumar Mishra, Advocate

For the Respondent/s : Miss Shashi Bala Verma, A.P.P.

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

and

HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

4 24-01-2018 The present Appeal was taken up for hearing under the heading “For Admission” for its final disposal considering the fact that judgment of conviction and sentence was passed only in three pages by the learned 1st Additional Sessions Judge Bagaha, West Champaran and appellant was held guilty and convicted for commission of offence under Section 364(A) of the Indian Penal Code, 1860 (hereinafter referred to as the “I.P.C.”). Judgment of conviction is dated: 7th September, 2017 and by order dated 11.09.2017 the appellant was sentenced to undergo imprisonment for life along with fine of Rs. 5,000/- and in case of non- payment of fine the appellant was directed to further undergo rigorous imprisonment for a period of one



year. Of- course, on 24.11.2017, while calling for the records of the case from the court below, the word “Admit” was mentioned and it was observed that the prayer for bail shall be considered immediately after receipt of the lower court record. Subsequently, after receipt of the lower court record the matter was placed under the heading “For Order” on 17.01.2018. On the said date cursorily on examining the lower court record, we thought it proper to finally dispose of the matter at the earliest, however, instead of directing to list the matter under the heading “For Orders” for its final disposal or for considering the prayer for bail, in order no. 3 dated 17.01.2018 in place of word under heading “ For Orders” it was incorrectly mentioned for listing under the heading “For Admission”. Thereafter, the matter has been listed on top of the list under the heading “For Admission”. However with the consent of both the parties i.e. Sri Milind Kumar Mishra, learned counsel for the appellant and Miss Shashi Bala Verma, learned Additional Public Prosecutor, we have taken up the matter for its final adjudication.

2. The sole appellant, has approached this Court by filing the present Appeal under Section 374(2) and 389 (1) of the Code of Criminal Procedure , 1973 (hereinafter referred to as the “Cr.P.C.”) against the judgment of his conviction and



sentence. By judgment dated : 07.09.2017 passed by one Shri Deepak Kumar Singh, learned 1st Additional Sessions Judge , Bagaha, West Champaran (hereinafter referred to as the “trial judge”) the appellant has been convicted for commission of offence under Section 364(A) of the I.P.C. in Sessions Trial No. 373 of 2009 {arising out of Laukariya P.S. Case No. 16 of 2006} and by order dated 11.09.2017 the appellant has been sentenced to under go imprisonment for life for commission of offence under Section 364(A) of the I.P.C. and he has further been imposed a fine of Rs. 5,000/- and in default of payment of fine, the appellant was directed to further undergo rigorous imprisonment for one year.

3. Short fact of the case is that on 11th March, 2006 at about 11.00 A.M., Sub Inspector of Police Manoj Kumar Mahton, Officer-in-Charge Laukaria Police Station recorded fardbayan of Fulmati Devi, W/o Jay Shree Bhagat (victim) of village: Bhelahi, P.S.:- Laukaria of district:- West Champaran (Bagaha). The fardbayan was recorded at the door of Fulmati Devi. In the fardbayan the informant, who was examined as P.W. 3 stated that in the preceding night after taking meal she along with her husband - Jay Shree Bhagat was sleeping in her *khaparpos* house. Her daughters: Kamlawati Devi / P.W. 2 and Meera



Kumari/ P.W. 1 both were sleeping in the shop. At about 12.00-1.00 in the night she woke up after hearing sound of push on the door. She stated that firstly unknown accused persons had broken the door of her shop, and thereafter, in her house which was adjacent to the shop they broken the door and tried to take away her husband -Jay Shree Bhagat, however, the informant tried to stop them. Subsequently, the accused persons took her husband outside the house, and thereafter, they looted certain articles such as: clothes and jewelry after breaking the box, and thereafter, all the accused persons left the place abducting her husband. She stated that accused persons were about 10-12 in number and she gave the description of the accused persons and stated that accused persons were talking with each other in "Bhojpuri" language. The informant further stated that the reason for the occurrence was a dispute in respect of land lying in Chautarwa Police Station with one Giri and others regarding which detail facts will be supplied subsequently. The informant further stated that the accused persons while going had also opened fire. On the basis of the said fardbayan of the informant a formal F.I.R. vide Laukaria P.S. Case No. 16 of 2006 was registered on 11.3.2006 at about 14.15 Hours (2.15 P.M.). The case was registered under Sections 364A/34/395 of the I.P.C.



and Section 27 of the Arms Act, 1959 against 10-12 unknown accused persons.

4. After registering F.I.R. Police investigated the case and thereafter, a charge -sheet vide Charge- Sheet No. 68 of 2007 dated 30.4.2007 was submitted against the appellant and one Janardan Giri for commission of offence under Sections 364(A) / 34 of the I.P.C. Thereafter, the learned Chief Judicial Magistrate took cognizance of offence and after completion of the provisions under Section 207 of the Cr.P.C. the case was committed to the court of Sessions, and as such, the case was numbered as Sessions Trial No. 373 of 2009. The case was fixed for framing of charge. At the stage of charge a petition under Section 227 of the Cr.P.C. was filed for discharge on behalf of the appellant/ Heera Lal Kushwaha, however, the same was rejected by the learned trial judge by its order dated 10.6.2015 and on 1st August, 2015 charge against the sole appellant / Heera Lal Kushwaha was framed for the offence under Section 364A/ 34 of the I.P.C.

5. To establish its case, on behalf of the prosecution initially three witnesses were examined, who were: P.W. 1 / Meera Kumari (daughter of the informant); P.W. 2 / Kamlawati Devi (daughter of the informant) and P.W. 3/ Fulmati Devi



(informant and wife of the victim). After evidence of P.W. 3/ Fulmati Devi, by order dated 29.09.2016 prosecution evidence was closed and the case was fixed for statement of accused under Section 313 of the Cr.P.C. and date in the case was fixed to: 07.10.2016. However, on the next date i.e. on 07.10.2016 a petition under Section 311 of the Cr.P.C. was filed for examination of one of the witnesses, namely: Hanif Mian. The learned trial judge without indicating regarding recall of earlier order i.e. order dated 29.09.2016 whereby prosecution evidence was closed, allowed the petition filed by the prosecution and on the same date, i.e. 7.10.2016 examined Hanif Mian as P.W. 4, and thereafter, on 09.11.2016 evidences and circumstances collected against the appellant was explained to him and statement of accused under Section 313 of the Cr.P.C. was recorded and the case was fixed for defence evidence. Thereafter, from the defence side on 3.1.2017 one of the witness- Ramakant Giri, S/o Janardan Giri was examined as D.W. 1. The father of the said witness namely Janardan Giri was also an accused charge- sheeted along with the appellant. At this juncture, it is necessary to indicate that since Janardan Giri had already died, the case had proceeded only against the present appellant i.e. Heera Lal Kushwaha. Thereafter, the case



was fixed for argument. For argument the case was fixed on number of dates, such as: 30.01.2017, 02.02.2017, 10.02.2017 and finally on 17.02.2017 after hearing judgment was reserved and the case was fixed to 02.03.2017 for judgment, however on perusal of order dated 02.03.2017 it appears that without any reason the learned trial judge had deferred the judgment and the case was fixed to 18.03.2017 for argument. On 18.03.2017 surprisingly from the prosecution side one another petition was filed under Section 311 of the Cr.P.C. with attendance of the victim/ Jaisree Bhagat. On perusal of order dated 18.03.2017 it is evident that after filing petition under Section 311 of the Cr.P.C. on behalf of the prosecution for examination of victim namely Jaisree Kushwaha as prosecution witness, a prayer was made on behalf of the defence for granting time for filing rejoinder, however, without passing any order on the prayer for adjournment for filing rejoinder, the learned trial judge allowed the petition of the prosecution and fixed the case to 20.03.2017 for evidence of Jaisree Bhagat @ Kushwaha who was examined on 20.03.2017, cross-examined and discharged as P.W. 5. Once after the case was fixed for judgment and one another witness was examined, in normal course it was duty on the part of the trial judge to again explain new evidence and



record further statement of the accused under Section 313 of the Cr.P.C., however, on perusal of the order dated 30.03.2017 it appears that the learned trial judge has recorded that defence had filed a petition regarding adopting the previous statement of the accused and thereafter, without recording statement of accused under Section 313 of the Cr.P.C. and explaining further evidence the learned trial judge fixed the case to 20.04.2017 for argument. Thereafter, on 20.04.2017 judgment was reserved and it was directed to be posted on 08.05.2017 for judgment. At this juncture it is pertinent to notice order dated 7.6.2017 passed by the learned Trial Judge. In order dated 7.6.2017 it has been recorded "A petition has been filed on behalf of defence that he adopts the statement u/s 313 Cr.P.C. recorded earlier." This suggests that trial judge had tried to cure his earlier mistake of not recording statement u/s 313 Cr.P.C. after fresh evidence of P.W. 5. Thereafter, on subsequent seven dates the matter was posted either for judgment or for argument and finally on 07.09.2017 the learned trial judge has passed judgment of conviction and on 11.9.2017 sentenced the appellant to undergo imprisonment for life with Rs. 5000/- fine and in default to further undergo rigorous imprisonment for one year.



6. Shri Milind Kumar Mishra, learned counsel for the appellant after referring to entire evidences, has argued that the learned trial judge in complete cryptic manner without dealing with any evidence, only in about three pages judgment, has convicted and sentenced the appellant. He submits that right from the very beginning the learned trial judge had adopted a procedure alien to the procedure prescribed in the Code of Criminal Procedure. He has emphasized that the prosecution though has alleged that Jaisree Bhagat @ Kuswaha / P.W. 5 was abducted and after payment of Rs. 25,000 /- he was released and victim has allegedly claimed to identify the appellant and one Janardan Giri, it has not been whispered as to how during his captive period the victim how arranged and paid the ransom amount of Rs. 25000/-. By way of referring to the evidence of prosecution witnesses it has been argued that prosecution witnesses have also accepted that the victim was using land of Janardan Giri (co-accused) , however, Janardan Giri in the meanwhile, had transferred ten kathas of land to the appellant of the present case and this was the reason for false implication of the appellant. This fact has been corroborated by the evidence of D.W. 1, who is none else but the son of Janardan Giri, who had transferred ten kathas of land to the appellant.



The said land was earlier being used by the victim himself. It has also been argued that the prosecution has completely failed to establish as to how once the husband of the informant was abducted by 10-12 unknown accused persons and he was released after 17-18 days from where the victim got Rs. 25,000/- to deliver the same as ransom money to the accused persons. This fact has not at all been established by any of the witnesses including the victim, who has incorrectly been examined subsequently as P.W. 5. It has further been argued that in the present case the investigating officer was also not examined as witness. Neither any step was taken by the prosecution for securing attendance of the investigating officer who had investigated the case. In absence of evidence of investigating officer the appellant has seriously been prejudiced and this was the reason that defence had felt difficulty in drawing attention of witnesses to their previous statements recorded under Section 161 of the Cr.P.C. In view of the facts and circumstances particularly the fact that judgment of conviction and sentence is cryptic, learned counsel for the appellant has prayed for setting aside the judgment of conviction and sentence at this initial state itself.

7. Miss Shashi Bala Verma, learned Additional Public



Prosecutor has tried to defend the prosecution case, however in view of non- sufficient evidence, she was not in a position to properly defend the prosecution case.

8. Besides hearing learned counsel for the parties, we have also minutely perused entire evidences and the lower court record. Before proceeding, it would be relevant to incorporate certain orders of the trial court i.e. from order dated 31.08.2016 on which date P.W. 3/ Fulmati Devi was examined, cross-examined and discharged to order dated 11.9.2017 i.e. the date of sentence. The orders from 31.08.2016 to the order dated 11.09.2017 passed by the Trial Judge are quoted hereinbelow:-

“31.08.16: Attendance of prosecution witness has been filed. Attendance of accused Heera Lal Kushwaha has been filed. P.W. 3 Phoolmati Devi examined and cross examined. Posted dt. 29.09.16 for evidences.

29.09.16: Attendance of prosecution has been filed. Attendance of accused has also been filed. Prosecution evidence closed. Posted dt. 07.10.16 for statement under Section 313 Cr.P.C.

07.10.16: Attendance of prosecution witness has been filed. Attendance of accused has also been filed. A petition u/s 311 Cr.P.C. filed. P.W. 4 Hanif Mian examined & cross – examined. Posted dt. 09.11.16 for evidence.

09.11.16: Attendance of prosecution has been filed. Attendance of accused, Hira Lal Kushwaha has been filed, accepted for today only. Statement of accused Hiralal Kushwaha recorded u/S 313 Cr.P.C. Posted dt. 07.12.16 for defence evidence.

07.12.16: Attendance of prosecution has been filed. Attendance of accused Heera Lal Kushwaha has been filed along with time



petition for defence evidence. Posted dt. 03.01.17 for defence evidence . Time petition allowed with cost of Rs. 500/-.

03.01.17: Attendance of prosecution has been filed. Attendance of accused Heera Lal Kushwaha has been filed. Attendance of defence witness has also been filed. Defence witness no. 1 Ramakant Giri examined and cross examined . Defence declared. Posted dt. 30.01.17 for argument.

30.01.17: Attendance of prosecution has been filed. Attendance of accused Heera Lal Kushwaha has also been filed. Posted dt. 02.02.17 for argument.

02.02.17: Attendance of prosecution has been filed. Attendance of accused Heera Lal Kushwaha has been filed. Posted dt. 10.02.17 for argument.

10.02.17: Attendance of prosecution has been filed. Attendance of accused Heera Lal Kushwaha has also been filed. Posted dt. 17.02.17 for argument.

17.02.17: Attendance of prosecution has been filed. Attendance of accused Heera Lal Kushwaha has been filed. Heard argument. **Posted dt. 02.03.17 for judgment.**

02.03.17: Attendance of prosecution has been filed. Attendance on behalf of accused Hiralal Kushwaha has been filed, accepted for today only. **Judgment deferred.** Posted dt. 18.03.17 for argument.

18.3.17: Accused Hira Lal Kushwaha is in attendance. The record was put up for argument. The Additional Public Prosecutor has filed a petition that the victim of the case who was abducted by the accused persons is present in the court to depose and support that prosecution story. As such, he may be allowed to be examined u/s 311 Cr.P.C. To the contrary the defence counsel has submitted that he wants to file rejoinder to the petition. After careful perusal of the record, I find that Jaisree Kushwaha is the person who is said to be abducted by the accused. Undoubtedly, he is a material witness in this case. As such, by invoking my powers u/s 311 Cr.P.C. I allow him to be examined. Put up this case on 20-3-17 for examination of witness Jaisree Kushwaha.



20.03.17: अभियुक्त हीरालाल कुशवाहा की हाजिरी दी गयी है। अभियोजन साक्षी की हाजिरी दी गयी है। पुकार पर उभय पक्ष उपस्थित हुए। उपस्थित साक्षी सं. 5 जयश्री भगत उर्फ कुशवाहा परीक्षण तथा प्रति परीक्षणोपरान्त उन्मुक्त किये गये। वाद अभिलेख दि. 30.03.17 को अग्रिम कार्यवाही हेतु प्रस्तुत करें।

30.03.17: Attendance of prosecution has been filed. Attendance of accused Heera Lal Kushwaha has been filed. A petition has been filed on behalf of defence that defence adopts previous deposition of the witness. Posted dt. 20.04.17 for argument.

20.05.17: Attendance of prosecution has been filed. Attendance of accused Heera Lal Kushwaha has been filed. Heard argument. Posted dt. 08.05.17 for judgment.

08.05.17: No step on behalf of prosecution. Attendance of accused Heera Lal Kushwaha has been filed. Judgment deferred on prayer of prosecution for more hearing. Posted dt. 07.06.17 for argument.

07.06.17: Attendance of accused Heera Lal Kushwaha has been filed. A petition has been filed on behalf of defence that he adopts the statement u/s 313 Cr.P.C. recorded earlier. Posted dt. 28.06.17 for argument.

28.06.17: Attendance of prosecution has been filed. Attendance of accused Heera Lal Kushwaha filed. Heard. Posted dt. 12.07.17 for judgment.

12.07.17: Representation on behalf of accused Heera Lal Kushwaha has been filed. A separate petition has been filed on behalf of defence for adjournment for hearing on law points. Posted dt. 27.07.17 for argument.

27.07.17: Attendance of accused Heera Lal Kushwaha has been filed. Heard both sides. Posted dt. 10.08.17 for judgment.

10.08.17: No step on behalf of prosecution. Attendance of accused Heera Lal Kushwaha has been filed. Learned defence counsel prayed for an adjournment for hearing on law point. Posted dt. 29.08.17 for argument.



29.08.17: Attendance of accused Heera Lal Kushwaha has been filed. Posted dt. 07.09.17 for judgment.

07.09.17: Attendance of prosecution has been filed. Attendance of accused Heera Lal Kushwaha has been filed. Judgment delivered in open court. Accused Heera Lal Kushwaha held guilty u/s 364(A) I.P.C. Accused taken into custody in c/w. Posted dt. 11.09.17 for hearing on sentence.

11.09.17: Attendance of prosecution has been filed. Accused in custody. Heera Lal Kushwaha produced from custody. Heard on the point of sentence. Sentence pronounced in open court. Accused in custody sentenced life imprisonment with a fine of Rs. 5000/=. In case of non-payment of fine one year R.I. additionally. Issue conviction warrant. Judgment in 3 separate sheets. Deposit the record into the record room.”

9. We will deal subsequently in respect of the mode adopted by the learned trial judge, but firstly it is necessary to examine what were the evidences on record. Accordingly, it is necessary to discuss cursorily the evidences of Fulmati Devi /informant in the present case who was examined as P.W. 3. Her evidence was recorded on 31st August, 2016 and in her evidence she stated that the date of occurrence was ten years back at about 12.00 in the night after taking meal she was sleeping with her husband, her two daughters namely: Kamlawati Devi / P.W. 2 and Meera / P.W. 1 were also sleeping. 12-13 miscreants arrived after breaking the door and took her husband out of the house. One shot of firing was also made and articles



were looted. Her statement was recorded by the Police. She stated that when her Malik (husband) returned back, then he told that Heera Lal (appellant) after taking Rs. 25,000 /- had left him and she also identified Heera Lal in dock. In cross-examination she stated that her *maikey* was in Yogapatti Baluwa and Janardan Giri, one of the accused (since died), was also of the same area. There was good relation with him. She was not knowing about the work of Heera Lal. She said that she was not recollecting as to whether Giri Ji had purchased land in Bhelahi. She was also not in a position to say as to whether it was dark night or full moon night. She stated that she did not identify anyone . Malik (husband) after return had stated that who had abducted him and to whom he had made payment. She accepted that this fact she had not disclose to the Police. She denied the suggestion that since Janardan Giri instead of transferring the land to the informant's side had sold the land to Heera Lal, so Heera Lal was falsely implicated in the present case. Though this witness has stated that she was informed by her husband who was abducted that he was released only after payment of Rs. 25,000/- but nothing was indicated as to when the victim was abducted, whether he was keeping Rs. 25,000/- or from which source while he was in



custody of accused persons had arranged the said money for its delivery to the accused persons. Meaning thereby, that story of being released after payment of Rs. 25,000/- was not at all corroborated by the evidence of this witness.

10. P.W. 1 /Meera Kumari (daughter of the informant) has also deposed like her mother and she stated that her father returned back after 15-16 days after payment of ransom amount, which was paid to Heera Lal / appellant, however, on examination of her evidence again it is evident that at the time of commission of crime, none of the accused persons were identified nor the fact regarding payment of ransom amount was corroborated by this witness. In similar manner, another daughter i.e. Kamlawati Devi, who was examined as P.W. 2 has deposed. She too has not indicated as to how ransom amount was paid. Surprisingly after examination of three witnesses the prosecution evidence was closed but on the next date without making any indication as to whether learned trial judge was recalling earlier order for closing of the prosecution evidence, allowed the petition filed on behalf of the prosecution under Section 311 of the Cr.P.C. for examination of one of the witnesses namely: Hanif Mian and on the same date he was examined as P.W. 4. This fact can be noticed from the



order- sheet which has already been elaborated in preceding paragraphs of this judgment. This witness Hanif Mian though has stated regarding the occurrence, **in cross-examination in paragraph no. 2 has made specific statement that in between Heera Lal / appellant and Jaisree / victim there was land dispute and this was the reason that Heera Lal was falsely implicated.** Despite the fact that this witness in his cross- examination has categorically stated the reason for false implication of the appellant, the learned trial judge in its judgment of conviction has not at all discussed as to what this witness had exactly stated that too regarding false implication of the appellant. This itself depicts many thing about the approach of learned Trial Judge. However after the evidence of P.W. 4 circumstances and evidences brought on record during trial was explained to the accused and his statement under Section 313 Cr.P.C. was recorded. Subsequently the appellant also examined one defence witness. It is relevant to indicate that statement of accused under Section 313 of the Cr.P.C. was recorded on 09.11.2016 and thereafter, one defence witness was examined namely: Ramakant Giri [whose father namely Janardan Giri was earlier charge-sheeted as one of the accused and subsequently died] was examined as D.W. 1. This witness



deposed that in -laws house of Jaisree Kushwaha was adjacent to the house of D.W. 1 and there was good relation between them. He further stated that on being told by Jaisree (victim) his father had purchased one acre of land in Bhelahi . He further stated that Jaisree (victim) was ploughing the said land. For about one year, he had given the grains. Subsequently, he stopped . Thereafter, they sold ten katha of land to Heera Lal Kushwaha (appellant) and due to this reason Jaisree (victim) had fabricated a case in which his father and the appellant /Heera Lal was sent to jail. He stated that his father had already died. Of-course, in cross- examination he stated that in the court he had deposed as asked by Heera Lal (appellant). After closure of defence case, again the case was fixed for argument on 30.01.2017, 02.02.2017, 10.02.2017, 17.02.2017 and on 17.02.2017 the next date was fixed to 02.03.2017 for judgment, however, on 02.03.2017 delivery of judgment was deferred and case was fixed to 18.03.2017 and on 18.03.2017 suddenly a petition under Section 311 of the Cr.P.C. was filed for examination of the victim. Though a prayer was made from defenc to grant time for filing rejoinder, without dealing with such prayer the learned trial judge allowed the petition for evidence of Jaisree Bhagat @ Kushwaha and he was examined



as P.W. 5 on 20.03.2017, also cross- examined and discharged. This witness i.e. P.W. 5/ Jaisree Bhagat @ Kushwaha in his evidence in paragraph 1 stated that on the date of occurrence in night about 12-1 Hours he was sleeping. His wife (P.W 3) was also there. Accused persons who were 11-12 in number after breaking the door caught him. They were carrying gun. His wife caught their legs even there after they abducted him and carried him to Jungle (Forest). Among the accused persons he identified Heera Lal (Appellant) and this witness further said that Janardan Giri was visiting there. He was not knowing name of other accused persons but claimed for identification if seen. This witness further said that after paying Rs. 25000/- (Rupees Twenty Five Thousand) to Heera Lal (Appellant) and other accused persons after 17-18 days he returned back. In paragraph 2 of his cross examination P.W. 5 stated that house of Janardan Giri (deceased accused) was in his in-law's village with whom he was having good relation. P.W. 5 accepted that he was using (जोत -आवाद) the land of Jandardan Giri. Again he stated that Sri Bhagat and Kanhaiya Tharu was using (जोत आवाद) the land. This P.W. 5 accepted that from the said chunk of land Heera Lal (Appellant) had purchased 10 Kathas of land. This witness has denied the suggestion that he had lodged false case



of kidnapping for getting the land transferred from Giri. He further denied the suggestion that since Giri Jee (co-accused deceased) had executed the land he had lodged the said case.

11. On bare examination of evidence of P.W. 5 / Jaisree Bhagat @ Kushwaha (husband of the informant) two facts are clear i.e. 1. there was dispute of land in between P.W. 5 on the one hand and appellant Heera Lal and Janardan Giri (deceased co-accused) on the other hand and 2. story of payment of ransom amount of Rs. 25000/- is not believable since nothing has been clarified by P.W. 5 as to how during his captive period he arranged and paid such ransom amount. Accordingly evidence of P.W. 5 does not inspire confidence and same is not believable.

12. The Trial Judge has committed serious error that once a new witness was examined after the judgment was reserved, in normal course it was prime duty on the part of the trial judge to further record statement of the accused under Section 313 Cr.P.C., but on one reason or the other it was not done and the case was fixed for argument on 30.03.2017 and thereafter, on 20.05.2017, 08.05.2017, 07.06.2017, 28.06.2017 , 12.07.2017 , 27.07.2017 ,10.8.2017 and 29.08.2017, the date was fixed either for judgment or argument and finally on 29.08.2017



judgment was reserved and thereafter, by judgment dated 07.09.2017 the learned trial judge convicted the appellant under section 364A of the I.P.C. and on 11.09.2017 he passed order of sentence. On perusal of the judgment of conviction and sentence it is evident that the learned trial judge has not at all indicated any evidence. It would be appropriate to incorporate the impugned judgment of conviction and sentence, which is as follows:-

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JUDGMENT

1. The aforesaid accused Hiralal Kushwaha stands trial for kidnapping Jai Sri Bhagat husband of the informant Phoolmati Devi for ransom. The prosecution story as averred in the fardbeyan of Phoolmati Devi recorded by S.I. Manoj Kumar Mahto O/C Laukariya P.S. on 11.3.2006 can be gleaned into short compass as follows:-

That in the night of 10.3.2006 the informant along with her husband was sleeping at about 12-1 A.M. in the night some unknown criminals had already broken the door of the shop and they also broke up the door of her house and caught Jai Sri Bhagat. The criminals abducted her husband and also took away her cloths and ornaments after breaking her box.

2. On the basis of this fard beyan Laukariya P.S. Case No. 16 / 2006 was registered and the Police took up investigation. On completion of investigation charge sheet was submitted against the accused Hiralal Kushwaha and the learned A.C.J.M. took cognizance of the offence thereafter on 20.06.2009 the case was committed to the court of Sessions. During course of trial one of the accused Janardan Giri died, hence the proceeding against him was dropped vide order dated 21.3.2015. Charge against the accused Hiralal Kushwaha has been framed on 01.08.2015 to which he pleaded not guilty and claimed trial of the offence. The defence version is denial of the allegations and the accused has claimed to be completely innocent.

3. Now, the pertinent question for consideration before this court is whether the prosecution has succeeded in bringing home the guilt of the accused beyond all shadow of reasonable doubt?

FINDINGS

4. Altogether five witnesses have been examined on behalf of the prosecution in support of its case. P.W. 1 is Meera



Kumari, P.W. 2 is Kamlawati Devi , P.W. 3 is Fulmati Devi, P.W. 4 is Hanif Mian and P.W. 5 is Jai Sri Bhagat @ Jai Sri Kushwaha.

P.W. 1 has stated on oath in para – 1 in her deposition that her father was abducted by 15-16 criminals. She has further stated that her father was released after the payment of Rs. 25 thousand to the accused Hiralal Kushwaha as ransom. During cross – examination nothing has been asked by the defence counsel on the point of payment of ransom.

P.W. 2 has stated in para -1 of her deposition that her father was abducted by 10-12 criminals and her father was released after payment of Rs. 25 thousand.

P.W. 3 is Fulmati Devi she has stated on oath that her husband was abducted by 12-13 persons when her husband came back after release he said that he was released after payment of rupees 25 thousand to accused Hiralal Kushwaha and his abduction was done by accused Hiralal Kushwaha. During cross- examination nothing has been asked by the defence counsel to test the veracity of this witness.

P.W. 4 is Hanif Mian who has supported the occurrence of abduction.

P.W. 5 is the victim himself. He has stated in clear words that accused Hiralal Kushwaha was one of the abductors and another person Janardan Giri used to come in the jungle. He has identified the accused Hiralal Kushwaha in the dock and he said that he was released from the custody of the criminals after payment of 25 thousand rupees to accused Hiralal Kushwaha. During cross- examination the defence lawyer has tried to impress that there was a previous land dispute between the parties.

5. No written statement has been filed on behalf of the defence side. Only one witness D.W. 1 Ramakant Giri who has said that Jai Sri Kushwaha has filed the false case.

6. Heard the Additional Public Prosecutor for the State and the learned defence counsel for the accused. The payment of ransom of Rs. 25 thousand and abduction of the victim by accused Hiralal Kushwaha has remained unrebutted through out the trial. Hence, I have no hesitation to hold the accused Hiralal Kushwaha guilty for committing an offence punishable u/s 364(A) I.P.C. Accordingly, his bail bond is cancelled and he is taken into custody. Put up on 11.09.2017 for hearing on the point of sentence.

11.09.2017:- Convict produced from the custody. Heard the lawyer for the convict and the learned Additional Public Prosecutor on the point of sentence.

It has been submitted on behalf of the learned counsel of the convict that the convict is a poor man who is only person to earn bread and salt of his family. Hence, lenient view may be taken by the court while awarding the sentence. To the contrary the Additional Public Prosecutor has submitted that the cases of abduction are on rise in this



locality and the court should strictly response to the growing crimes scenario by awarding maximum punishment to the convict.

Considering the facts and circumstances of the case, I award life imprisonment to the convict along with a fine of Rs. 5000/-, in case of non payment of fine the convict shall further undergo rigorous imprisonment for a period of one year additionally. I am convinced it is sufficient the interest of justice.”

13. On examination of entire evidence we are of the considered opinion that prosecution had not proved its case and it smacks false implication even then the learned Trial Judge without appreciating evidence in its right perspective following a procedure alien to the established procedure has convicted the appellant that too in cryptic and unreasonable manner. However we are refraining to record any adverse comment on the Trial Judge in judicial side. Surprisingly, the appellant has been sentenced to undergo rigorous imprisonment for life, but the learned trial judge appears to be completely insensitive and this was the reason that no detail reason was assigned by the learned trial judge. Accordingly, on the basis of examination of the evidences on record, we are satisfied that the learned trial judge has passed completely incorrect and illegal judgment of conviction and sentence since the prosecution has not at all established its case beyond all reasonable doubt. Accordingly, the judgment of conviction dated 07.09.2017 and sentence dated 11.09.2017 passed in Sessions Trial No. 373 of 2009



{ arising out of Laukariya P.S. Case No. 16 of 2006 } by Shri
Deepak Kumar Singh, 1st Additional Sessions Judge, Bagaha,
West Champaran is hereby set aside and the Appeal is allowed.
Since the appellant is in custody, he is directed to be released
forthwith, if not required in any other case.

(Rakesh Kumar, J)

(Arvind Srivastava, J)

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