

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.1871 of 2019

Arising Out of PS. Case No.-81 Year-2013 Thana- MUZFFARPUR GRP CASE District-
Muzaffarpur

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RAMJEET BAITHA Son of Chandeshwar Baitha Resident of Village - Gosai Banua, P.S.- Minapur, Distt – Muzaffarpur.	 Appellant/s
Versus	
The State of Bihar	 Respondent/s

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Appearance :

For the Appellant/s	:	Mr.Mrityunjay Kumar, Adv.
For the Respondent/s	:	Mr.Bipin Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

14-10-2019 Heard learned counsel for the appellant as well as
learned APP.

2. While going through the record after hearing the argument having been made on behalf of respective learned counsels over the prayer for bail, it has been found prudent to dispose it of on merit instead of allowing the appeal to linger, furthermore, whereupon, learned respective counsels have been heard.

3. Instant appeal has been preferred against the judgment of conviction dated 23.01.2019 and order of sentence dated 28.01.2019 passed by 11th Additional Sessions Judge, Muzaffarpur in Sessions Trial No. 777/2014 arising out of Muzaffarpur Rail PS Case No. 81/2013 whereby and whereunder the sole appellant, Ramjeet Baitha has been found guilty for an offence punishable under Section 370 IPC and sentenced to undergo RI for 7 years, under Section 374 IPC and sentenced to undergo RI for 6 months, under Section 23 of the J.



J. Act and sentenced to undergo SI for 6 months, under Section 26 of the J.J. Act and sentenced to undergo SI for 3 years with a further direction to run the sentences concurrently.

4. Shorn of unnecessary details, the instant prosecution has originated on the written report of one Sumit Kumar Singh, a Case Worker, “Paryas Sansthan” Samastipur divulging therein that today, i.e. on 25.09.2013 at about 10:30 PM while he was at booking counter, Muzaffarpur, he has seen seven minor children in the company of one major person in suspicious circumstances, whereupon, he interrogated the major person who disclosed his identity as Ramjeet Baitha son of Chandeshwar Baitha Resident of Village - Gosai Banua, P.S.- Minapur, Distt – Muzaffarpur. The children also disclosed their identity as 1. Pappu Kumar son of Chulhai Baitha aged about 13 years, 2. Guddu Kumar son of Sahdeo Baitha aged about 12 years, 3. Rajiv Baitha son of Chandreshwar Baitha aged about 14 years, 4. Binay Baitha son of Basudeo Baitha aged about 13 years, 5. Sunil Kumar son of Basudeo Baitha aged about 13 years, 6. Pramod Kumar son of Swagarth Baitha aged about 11 years, 7. Prem Baith son of Rajdeo Baitha aged about 13 years, all residents of village- Gosai Banua, P.S.- Minapur, Distt – Muzaffarpur. On query, the respective children disclosed that



after paying Rs. 5000/- in advance to their parents, the aforesaid Ramjeet Baitha was carrying them for child labour. On query, Ramjeet Baitha confessed. It has also been disclosed that during midst thereof, Constable, Mahtab Alam along with other police constables arrived and with their help all the children along with Ramjeet Baitha have been produced before officer incharge Rail PS. Furthermore, it is also evident that on search from the possession of Ramjeet Baitha, Voter-Identity Card as well as eight railway tickets (Muzaffarpur to Ambala Cantt.) have been recovered and for that production-cum-seizure list was prepared.

5. After registration of Muzaffarpur Rail PS Case No. 81/2013, investigation commenced which concluded by way of submission of charge-sheet, facilitating the trial meeting with ultimate result, subject matter of the instant appeal.

6. Defence case as is evident from the mode of cross-examination as well as statement recorded under Section 313 CrPC is that of complete denial. However, nothing has been adduced in defence.

7. In order to substantiate its case, prosecution has examined two PWs who are PW-1, Binod Rai, a Police Constable and PW-2, Shyam Prasad, Tea Vendor. Nothing has been adduced/exhibited at the end of prosecution.



8. From the evidence available on the record, it is apparent that PW-2 had not supported the claim of the prosecution and so, was declared hostile. PW-1 is the Police Constable who had deposed that on the alleged date and time of occurrence, while he was at platform no. 1, he had seen one person carrying seven children whereupon, was apprehended and then, interrogated upon and during course thereof, he disclosed his identity as Ramjeet Baitha and further also confessed that he was carrying the children to Amabala Cantt. for the purpose of child labour, whereupon, they all were taken to police station and then, case was instituted. During cross-examination, he has stated that he had not tried to trace out guardian/parent of the respective children. He has further stated that he is unable to say whether his signature is over the production-cum-seizure list or not.

9. It is needless to say that conviction could be recorded on the statement of sole witness. In terms of Section 134 of the Evidence Act, it is the quality not the quantity which matters and so, if the evidence of sole witness inspires confidence, then in that event, conviction could be recorded on the testimony of sole witness but, for that, the evidence should be consistent so that, one should rely thereupon. When the



evidence of PW-1 has been gone through, it is evident that he had ciphered the presence of the informant, namely, Sumit Kumar Singh and the activity having taken up at his end. In likewise manner, he had also disapproved the presence of other police officials. He remained, projected himself alone, took credit to himself and, on account thereof, his testimony became suspicious as, though the written report is not an exhibit of the record but, did not disclose his presence rather disclosed presence of Mahtab Alam, Constable 313 and in the aforesaid background, reliability of evidence of PW-1 goes away. Further, keeping the informant at bay, the PW-1 completely blurred the fate of the prosecution.

10. Consequent thereupon, the judgment of conviction and sentence recorded by the learned lower court is set aside. Appeal is allowed.

11. Appellant is under custody, he is directed to be set at liberty forthwith, if not wanted in any other case.

(Aditya Kumar Trivedi, J)

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