

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.106 of 2014

Arising Out of PS. Case No.-20 Year-2008 Thana- KARJAIN District- Supaul

Tej Narayan Paswan, son of Late Ram Prasad Paswan, Resident of Village-
Sitapur, P.S. Karjain, District- Supaul.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Sri Rakesh Kumar Jha, Advocate
For the Respondent/s : Sri Ajay Mishra, A.P.P.

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
and
HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

Date : 01-10-2019

1. The sole appellant, who was convicted and sentenced in Sessions Trial No. 229 of 2009 for the offence under Section 364A of the Indian Penal Code, 1860 [hereinafter referred to as the “I.P.C.”] has preferred the present appeal under Section 374 (2) of the Code Of Criminal Procedure, 1973 [hereinafter referred to as the ‘Cr.P.C.’] against the judgment of his conviction and sentence.

2. The appellant by judgment dated - 29.11.2013 was convicted for the offence under Section 364-A of the I.P.C. and by order dated: 02.12.2013 under Section 364-A of the I.P.C. he was directed to undergo rigorous imprisonment for



life and to pay a fine of Rs. 20,000/-. In case of default in payment of fine, he was directed to further undergo simple imprisonment for two years. The judgment of conviction and sentence was passed by Sri Sunil Kumar Choudhary, learned Adhoc Additional Sessions Judge II, Supaul [hereinafter referred to as 'trial judge'] in Sessions Trial No. 229 of 2009 {arising out of Karjain P.S. Case No. 20 of 2008}.

3. Short fact of the case is that on 14.05.2008 at 16.45 hours (4.45 hours) in the village -Sitapur i.e. the place of recovery of the victim under Police Station: Karjain, self statement of Sub Inspector of Police Vakil Prasad Yadav (P.W. 5), S.H.O., Balua Bazar Police Station was recorded. The informant disclosed that on the same day i.e. on 14.05.2008 he conducted a raid in the house of Tej Narayan Paswan (appellant). The raid was conducted with S.D.P.O. - Sri Shreedhar Mandal (not examined) and other forces who were members of the raiding party. In the self statement he stated that at 14.00 Hours (2.00 P.M.) he visited the office of Sub Divisional Police Officer, Birpur for some urgent work. In the meanwhile, the Sub Divisional Police Officer, Birpur got a secret information that in the village -Sitapur, Police Station-



Karjain in the house of Tej Narayan Paswan [appellant] some of the accused persons had confined one Satyendra Mahto who was kidnapped for ransom from Madhuban, Nepal. The S.D.P.O., Birpur, immediately shared the said secret information with the informant and thereafter, a raiding party was prepared and proceeded for conducting raid at Sitapur from Birpur. On the same day at about 3.30 P.M. the informant i.e. Sub Inspector of Police -Vakil Prasad Yadav, Officer -in- charge, Balua Bazar Police Station with S.D.P.O., Birpur namely Shri Shreedhar Mandal (not examined) and S.A.P. Jawans namely: Tarkeshwar Mishra, (not examined), Anjey Kumar (not examined), Arun Kumar Chaudhary (not examined) on Government Tata Sumo which was of S.D.P.O., Officer- in- charge of Ratanpur Police Station namely- Lallu Tiwary (not examined) on his Government Jeep along with armed forces namely: Lalan Prasad (not examined), Arun Kumar (not examined), Ramesh Yadav (not examined), Sub Inspector of Police of Karjain Police Station -Azadi Ram (P.W. 3) and armed forces of the same Police Station and also Officer-in-Charge of Raghapur Police Station, namely: Ganpati Thakur (P.W. 6) and armed forces of Raghapur Police



Station on Government Jeep came to the house of Tej Narayan Paswan (appellant) alongwith two independent witnesses, namely- Ram Sagar Mahto (P.W. 2) and Deo Narain Mahto (P.W. 1). Immediately thereafter one young person tried to flee away from the place of Tej Narayan Paswan and fled towards bamboo orchard however, with the help of armed forces, on chase he was apprehended. On being asked in presence of two independent witnesses namely: Ram Sagar Mahto and Deo Narain Mahto [P.W. 2 and P.W. 1 respectively] his personal search was conducted and from right pocket of his half pant a country made loaded pistol which was of .315 Bore. It was seized while preparing seizure list. The accused person, who was apprehended, on being asked disclosed his name as Deepak Paswan (trial separated), who was resident of Kodelari, P.S. - Hanumannagar, District- Saptari, Nepal. Some of the accused persons succeeded in fleeing away. The accused, who was apprehended namely- Deepak Paswan, disclosed the name of other kidnappers, namely: Birendra Paswan (investigation was kept pending), Bhagwani Paswan (died during investigation), Budhan Mallah (acquitted), Bhuwan (acquitted) and Rambo Mukhiya (acquitted). The



apprehended accused namely- Deepak Paswan further disclosed before the informant that all accused persons had kidnapped the victim namely, Satyendra Kumar Mahto (P.W. 4) from his Rice Mill and from there he was carried on foot to some extent and thereafter, he was forced to sit on a motorcycle and thereafter, on the said motorcycle via Karru Chowk came to the house of Tej Narayan Paswan, which was in the village -Sitapur, P.S. -Karjain and they had confined the victim in the house of Tej Narayan Paswan who was also keeping vigilance on the victim. The accused further disclosed that they had demanded Rs. 25 Lakh as ransom from the family members of the victim. The apprehended accused further disclosed that the victim -Satyendra Mahto (P.W. 4) was confined in the house of Tej Narayan Paswan (appellant). Thereafter, the informant and other Police personnels in presence of aforesaid two independent witnesses namely, Ram Sagar Mahto (P.W. 2) and Deo Narain Mahto (P.W. 1) conducted search in the house of Tej Narayan Paswan (appellant). Then he found the victim concealed on the bamboo 'Chhajja' and the victim was recovered. The victim on being asked disclosed his name as Satyendra Mahto, S/o



Ramu Mahto, resident of village- Laukahi, District- Sunsari, Nepal. The victim further disclosed that he was kidnapped from Madhuban Rice Mill from Nepal by way of frightening through arms. He disclosed that there were 7-8 accused persons who were involved in his kidnapping for ransom. The victim identified the apprehended accused namely- Deepak Paswan and he claimed to identify other accused persons on being shown. He identified Deepak Paswan and said that accused persons had confined him after kidnapping in the house of Tej Narayan Paswan of village- Sitapur and all through the kidnappers were putting pistol on him and threatening for fulfillment of demand of ransom of Rs. 25 lakh otherwise he was threatened to be killed. As per the informant in his self statement, the victim disclosed that in day time he was being kept on bamboo 'Chhajji' and during night hours he was asked to sleep on the floor. The informant disclosed that during raid except Deepak Paswan other four accused persons taking advantage of bamboo orchard and forest succeeded in fleeing away. In course of conducting raid in presence of two witnesses from the court yard of Mahendra Paswan (acquitted) a Hero Honda Passion Black colour motorcycle bearing



Registration No. UP16J452 was also seized. One jacket of one of the kidnappers from which packet SIM of the victim was seized. Accused Mahendra Paswan and Tej Narayan Paswan succeeded in fleeing away. The informant claimed that the said kidnapping was made for ransom and accused persons including the appellant were involved in the crime. Motorcycle, SIM and black jackets were seized and handed over to Assistant Sub Inspector -Azadi Ram (P.W. 3) of Karjain Police Station. Arrested accused- Deepak Paswan, as per self written statement of the informant stated that in the said kidnapping Munshi Mukhiya (trial separated), Bhola Paswan (acquitted) and Lakhan Mukhia @ Lakho were also involved. On the basis of the said self written statement of S.H.O. Vakil Prasad Yadav (P.W. 5) on the same day i.e. on 14/05/2008 at 7.15 P.M. a formal F.I.R. vide Karjian P.S. Case No. 20 of 2008 was registered for the offence under Section 364(A)/414 of the I.P.C. against eleven accused, namely: -

- (1) Deepak Paswan (trial separated)
- (2) Bhagwani Paswan (died during investigation)
- (3) Budhan Mallah (acquitted)
- (4) Bhuwan (acquitted)
- (5) Rambo Mukhiya (acquitted)
- (6) Birendra Paswan (investigation kept pending)
- (7) Tej Narayan Paswan (appellant)
- (8) Mahendra Paswan (acquitted)
- (9) Munshi Mukhiya (trial separated)



(10) Bhola Paswan (acquitted)

(11) Lakho @ Lakhan Mukhia (acquitted)

4. After registering F.I.R. Police started investigation and 1st charge sheet was submitted on 09.08.2008 against arrested accused namely- Deepak Paswan whose trial was separated. On 17/12/2008 1st supplementary charge sheet against Munshi Mukhiya (trial separated) was filed and finally on 05.08.2009 2nd supplementary charge sheet against remaining nine accused, which includes the appellant namely- Tej Narayan Paswan, was forwarded showing Birendra Paswan as absconder and Bhagwani Paswan as dead. After submission of charge sheet on 17.08.2009 learned Sub Divisional Judicial Magistrate, Birpur, Supaul took cognizance of the offence and on 05.09.2009 case of seven accused persons which includes the appellant -Tej Narayan Paswan was committed to the court of Sessions and as such, it was numbered as Sessions Trial No. 229 of 2009. On 15.10.2009 charge under Section 364(A) and 414 of the I.P.C. was framed against all the seven accused persons.

5. During the trial to establish its case on behalf of the prosecution altogether eight witnesses were examined. Out of eight witnesses, P.W. 1 - Deo Narain Mahto and P.W. 2-



Ram Sagar Mahto were examined as formal witnesses who were shown as seizure list witnesses. P.W. 4 (Satyendra Kumar Mahto) is the victim of the case. P.W. 5 (Vakil Prasad Yadav), Sub Inspector of Police -cum -Officer -in- charge of Balua Bazar Police Station is the informant of the case. P.W. 6 (Ganpati Thakur) was the Officer -in-charge of Raghopur Police Station and one of the members of the raiding party. P.W. 3 (Azadi Ram) Assistant Sub Inspector of Police of Karjain Police Station is the 1st Investigating officer. Bateshwar Nath Singh (P.W. 7) was the Officer in-charge of Karjain Police Station is the 2nd Investigating Officer and P.W. 8 - Bhola Prasad Singh on 20.05.2009 was the Officer-in-charge of Karjain Police Station who after taking up investigating submitted charge sheet.

6. After conclusion of the prosecution evidence, on 24/07/2013 circumstances and evidences which were brought on record against the accused persons were explained and their statement under Section 313 of the Cr.P.C. was recorded in which appellant and others claimed to be innocent.

7. The learned trial judge on the basis of evidence on record by the impugned judgment convicted the appellant



whereas other six accused persons who were tried together were acquitted.

8. Sri Rakesh Kumar Jha, learned counsel for the appellant after placing entire evidence on record has argued that prosecution has not been able to establish its case beyond all reasonable doubts even then the learned trial judge has incorrectly passed the judgment of conviction and sentence. He submits that it is the prosecution case that in presence of P.W. 1 and P.W. 2 on disclosure made by one of the apprehended accused namely- Deepak Paswan, the victim was shown to be recovered from the house of the appellant, however the victim (P.W. 4) in his evidence in paragraph- 1 and 2 has categorically stated that after noticing the arrival of the Police he came out and on his disclosure Deepak Paswan was arrested. Accordingly, it has been argued that prosecution case that at the time of raid the victim was recovered confined on the bamboo 'Chachari' inside the house of the appellant is itself demolished and no reliance can be placed on such evidence. He further submits that even the evidence is not very much specific as to from whose house the victim had come out at the time of his discovery whereas, at the place of



occurrence there were three connected houses. He highlights that from the evidence of P.W. 6 in paragraph 9 & 10 of his cross examination it has come that in one courtyard there were three houses and in absence of specific case of recovery of the victim from the house as well as in absence of the concerned 'Chaukidar' the prosecution has completely failed to establish the case of recovery of the victim from inside the house of the appellant. He further submits that the victim was from another country i.e. Nepal and the appellant was not arrested at the place of occurrence at the time of recovery of the victim. In normal course it was required on the part of the Investigating Officer to get the appellant identified in the test identification parade however, no T.I.P. was held. Even during evidence the victim had initially not identified the appellant while he was in dock but the victim in paragraph 10 of his cross examination stated that name of the appellant was disclosed by the Police Officer. Accordingly, it has been argued that without establishing a case of identification of the appellant by the victim the learned trial judge was not required to hold the appellant guilty. Lastly it has been argued that prosecution has completely failed to establish the case of demand of



ransom which is the basic ingredient for application of Section 364-A of the I.P.C., and as such, in any event conviction of the appellant under Section 364-A of the I.P.C. is not sustainable in the eye of law. Learned counsel for the appellant has also argued that despite the fact that at the time of raid it was shown that number of Police Officers and armed forces were there, but prosecution in a selective manner has produced only some witnesses. Prosecution has not produced S.D.P.O. -Sri Shreedhar Mandal who himself had got information and he was the leader of the raiding party.

9. Sri Ajay Mishra, learned Additional Public Prosecutor opposing the appeal submits that prosecution has categorically established the case of kidnapping of the victim and his confinement in the house of the appellant. However, he was also not confident regarding establishing of case of ransom and as such, he submitted that conviction of the appellant can be altered from 364-A to Section 365 of the I.P.C.

10. Besides hearing learned counsel for the parties, we have minutely examined entire evidence on record. On examination of entire evidence it is evident that the victim



(P.W. 4) has deposed as to how he was kidnapped at the point of arms while he was inside his Rice Mill in a district in Nepal and to some extent he was forced to move on foot and finally he was loaded on a motorcycle, his eyes were wrapped and one person sitting behind him on the motorcycle had pointed arm and he was thereafter brought to the place from where his recovery was made. As per his evidence the victim was confined in the house of the appellant. P.W. 1 (Deo Narain Mehta) who is one of the relatives of the victim in his evidence has stated that he had gone to Birpur when he came to know that someone was kidnapped and confined in a house who was his maternal grand son- in- law. He went there and he saw that Police after arresting one boy had come to Birpur Police Station and his maternal grand son -in- law was also there. Police had also seized one Hero Honda motorcycle and prepared seizure list. He identified his signature on the said seizure list, which was marked as Ext. 1. In paragraph 4 of his cross examination he categorically stated that his signature was obtained in the Police Station on a paper which was written however same was not read over to him. He was asked to put signature thereafter he signed.



11. P.W. 2 (Ram Sagar Mahto) is another witness to the seizure list who identified his signature on the seizure list relating to motorcycle which was marked as Ext. 1/A. In paragraph- 2 of his evidence he stated that maternal grand son -in- law of Deo Narain Jee (P.W. 1) was kidnapped from Nepal. He went to Police Station and saw him. He did not identify the accused. He stated that on being asked by Bara Babu he put his signature. In paragraph- 4 of his cross examination he stated that in Birpur Police Station Bara Babu had taken his signature and he had stated that the said paper was the seizure list.

12. P.W. 4 (Satyendra Mahto) is the victim. In his evidence he identified his signature on his statement recorded under Section 164 of the Cr.P.C. which was marked as Ext. 3. In his examination -in-chief he stated that on 11.05.2008 in between 6.30 & 7.00 in the evening he was watching loading of rice in truck in his Rice Mill. During that period about 10-12 accused persons variously armed entered inside his Rice Mill. They put gun on him, his wife and his staff. Thereafter they forced him to go with them otherwise he was threatened to be killed. They tied both of his hands and thereafter on foot



he was forced to move to the accused persons some extent on National Highway of Nepal and thereafter near Birpur Badshah Chowk he was brought and on a motorcycle he was asked to sit in the middle and thereafter, on motorcycle he was brought to the house of Tej Narayan Paswan (appellant). On the next day he was tortured and threatened to give telephone call to family members for bringing Rs. 25 lakhs as ransom. From Sunday to Wednesday he was kept confined and on Wednesday the accused persons got some telephone call saying that Police was arriving and all fled away. Then Police arrived there. Noticing the arrival of the Police he disclosed that he was a resident of Nepal and he was kidnapped. The accused persons had fled away however one of the accused was arrested on being identified by this witness. He further disclosed that victim, Deepak Paswan, Tej Narayan Paswan (appellant) and others were staying in the house and he claimed to identify them on being put before him. In paragraph- 2 of his evidence it has come that though in the dock Mahendra Paswan and Tej Narayan Paswan (appellant) were present however he denied to identify either of two, however, while the appellant disclosed his name in the



court then this witness claimed to identify him and said that in his house he was confined. On examination of evidence of this witness particularly non identifying the appellant in dock by this witness creates some doubt in the mind of the court. It is not a case that this appellant was ever put on test identification parade or identified. Neither he was got identified in T.I. Parade nor even in dock he was initially identified by the victim.

13. P.W. 5 (Vakil Prasad Yadav) on 14.05.2008 was Officer -in- charge of Balua Bazar Police Station and he is the informant of the case. In his evidence he stated that on 14.05.2008 at about 3.30 P.M. occurrence had taken place. On the same day at 2.00 P.M. he had gone to office of S.D.P.O. where S.D.P.O. Shreedhar Mandal got secret information that in the house of Tej Narayan Paswan (appellant) who was the resident of Sitapur village one Satyendra Mahto was confined after kidnapping. Thereafter he along with S.D.P.O. and other Police Parties which has been explained in the F.I.R. went to the village -Sitapur. From the back side of the house of Tej Narayan Paswan (appellant) one accused started fleeing away who was apprehended and in presence of two witnesses



namely: Ram Sagar Mahto (P.W. 2) and Deo Narain Mahto (P.W. 1) his personal search was made on which from right side of half pant a loaded .315 bullet country made pistol was seized. On being asked he disclosed his name as Deepak Paswan of District- -Saptari, Nepal. Other accused persons succeeded in fleeing away. The apprehended Deepak Paswan disclosed that on 11.05.2008 he had kidnapped Satyendra Mahto from Madhuban, Nepal from his Rice Mill and thereafter he had brought him and confined in the house of Tej Narayan Paswan and he had also demanded Rs. 25 lakhs as ransom. This witness in paragraph- 3 stated that the kidnapped person was kept inside house of 'Chhajja' of Tej Narayan Paswan. With the help of two independent witnesses i.e P.W. 1 and P.W. 2 the house was searched and inside house over 'Chhajji' Satyendra Mahto was recovered and on inquiry he disclosed his name as Satyendra Mahto. This witness thereafter prepared written report, which was marked as Ext. 4. He also identified his signature on the seizure list, which was marked as Ext. 1/B. In cross examination in paragraph- 16 he stated that in the village Sitapur he had not recorded as to who had shown the house of the appellant nor he had



written that Rs. 25 Lakh was demanded from the family members of the victim. In paragraph 19 of his cross examination he admitted that seizure list witnesses were not local persons but they were residents of Police Station-Ratanpur which was about 15 K.M. away from Karjain Police Station. Further in paragraph- 20 of his cross examination he stated that search team was laid by S.D.P.O. -Shri Shreedhar Mandal.

14. Similarly, P.W. 6 - Ganpati Thakur who was also one of the members of the raiding party and Officer -in-charge of Raghapur Police Station on 14.05.2008 has deposed almost like P.W.5.

15. P.W. 3 (Azadi Ram) on 14.05.2008 was posted as Assistant Sub Inspector of Police in Karjain Police Station who is the 1st Investigating Officer of the case who proved his endorsement on the written report, which was marked as Ext. 2 and his signature on the formal F.I.R. is Ext. ½ and signature on the seizure list is Ext. 1/3.

16. P.W. 7 -Bateshwar Nath Singh on 26.12.2008 was the Officer- in- charge of Karjain Police Station and he is the 2nd Investigating Officer who took charge of



investigation only after proclamation of accused persons and P.W. 8 (Bhola Prasad Singh) on 20.05.2009 was Officer- in-charge of Karjain Police Station who took charge of the investigation. He only arrested one accused person and he submitted charge sheet.

17. On examination of the evidence of P.W. 1 and P.W. 2 it is difficult to rely on the evidence of the informant -P.W. 5 that in presence of those witnesses raid was conducted in the house of the appellant or recovery of victim was made. In the evidence of P.W. 1 and P.W. 2 they are very much specific that they came to Police Station after getting information that one kidnapped person was recovered and one accused was apprehended who were in Police Station. So presence of both witnesses i.e. P.W.1 and P.W. 2 at the time of so- called search or recovery comes into cloud of doubt, rather no reliance can be placed on such evidence. Only evidence that recovery was made from the house of the appellant has come from the mouth of all the Police Officials. So far involvement of the appellant is concerned his non identification by the victim even in the dock also creates serious doubt on the prosecution case. The prosecution is



completely silent as to why the S.D.P.O. who had got information that one person from Nepal was kidnapped and kept in the house of the appellant has not been examined by the prosecution without any explanation. Moreover, on examination of the evidence of the victim -P.W. 4 it appears that in presence of his wife and other employees he was apprehended however none of those persons have come forward to support the case nor it is case of the prosecution that they were examined during investigation also. Regarding demand of ransom i.e. Rs. 25 lakh is concerned, on this point also there is no specific evidence that such demand was conveyed to any family member of the victim or not. On this very point the prosecution evidence is completely lacking. It is also a fact that the appellant along with six others were put on trial but except the appellant all other six accused were acquitted by the learned trial judge since prosecution had completely failed to produce evidence against them. So far evidence in respect of identification of appellant is concerned it appears to be doubtful. On examination of entire evidence which we have discussed hereinabove, we are of opinion that prosecution has not been able to establish its case beyond all



reasonable doubts, and as such, by way of extending benefit of doubt it is desirable to interfere with judgment of conviction and sentence.

18. Accordingly, the judgment of conviction and sentence dated 29.11.2013 and 02.12.2013 respectively passed by Sri Sunil Kumar Choudhary, learned Adhoc Additional Sessions Judge II , Supaul in Sessions Trial No. 229 of 2009 (arising out of Karjain P.S. Case No. 20 of 2008) is hereby set aside and appellant is acquitted from the charge. The Appeal is allowed. Since the appellant is in jail and his judgment of conviction and sentence has been set aside, it is hereby directed to release him forthwith , if not wanted in any other case.

(Rakesh Kumar, J)

Anjani Kumar Sharan, J: **I agree.**

praful/-

(Anjani Kumar Sharan, J)

AFR/NAFR	AFR
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