

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.269 of 2016

Arising Out of PS. Case No.-147 Year-2013 Thana- TARIYANI CHOWK District- Sheohar

Meghu Sahni, son of Gagandeo Sahni, resident of village- Rajadih, P.S.-
Tariyani, District-Sheohar.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Arun Kumar Tripathi, Amicus Cureae.
For the Respondent/s : Mr. Abha Singh, APP.

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

Date : 06-09-2019

None appears on behalf of the appellant. As such Sri Arun Kumar Tripathi, learned Advocate has been requested to assist the Court as Amicus Curiae.

The appellant Meghu Sahni vide judgment of conviction dated 05.11.2015 and order of sentence dated 06.11.2015 passed in S.Tr. No.52 of 2014 arising out of Tariyani P.S. Case No. 147 of 2013 by the District & Sessions Judge, Sheohar, has been sentenced to undergo R.I for 5 years for an offence punishable under Section 363 of the Indian Penal Code and RI to 10 years for an offence punishable under Section 364 of the Indian Penal Code with a further direction to run the sentences concurrently and further direction that the period having undergone during course of trial will be subject to set off under Section 428 of Cr.P.C arising out of Tariyani P.S. Case no. 147 of 2013.



Chanda Devi (PW-6) filed written report on 04.12.2013 putting an allegation therein that in the preceding night at about 9 PM, Sanjay Sahni S/o not known, R/o village Rajdih, P.S. Tariyani, District Sheohar and Meghu Sahni, S/o of Gagandeo Sahni, R/o village Rajdih, P.S. Tariyani, District- Sheohar came and forcibly took away her son Rahul aged about 5 months. On the pretext that at the instance of her husband Nawab Thakur, who is still under judicial custody at Motihari Jail, they have been remanded to custody and for that, this action is being taken in revenge.

Tariyani P.S. Case No. 147 of 2013 has been instituted followed with an investigation as well as submission of charge-sheet, facilitating the trial meeting with the ultimate result subject matter of the instant appeal.

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

In order to substantiate its case, prosecution has examined altogether 7 witnesses namely PW-1 Ramyash Thakur, PW-2 Nirmla Devi, PW-3 Shail Devi, PW-4 Ramashray Majhi, PW-5 Raghundandan Sada, PW-6 Chanda Devi and PW-7 Vinay



Kumar Jha side by side has also exhibited, Ex.1 written report, Ex. 1/1 endorsement over the written report and Ex. 2 formal FIR. As stated above, nothing has been adduced at the end of the defence.

While assailing the judgment of conviction and sentence, the learned amicus curiae has submitted that enmity is a double edged sword. There happens to be specific disclosure that from the last one year informant was living at her *maika*. She had begotten a son at her *maika*. Appellant is not resident of her *maika* or *sasural* and so, it is difficult to accept that he will have a knowledge with regard to pregnancy of the informant followed with delivery of a male child that too, at the relevant time was of 5 months. Furthermore, right from the initial version, it is apparent that there happens to be complete lack of at the material that informant was under watch at the end of Appellant and his associate. It has also been submitted that no order sheet of any case has been filed in order to substantiate that at the instance of husband of informant appellant was ever, gone to custody. In likewise manner, criminal antecedent of appellant has also not been brought up on record.

Furthermore, it has also been submitted that probability of the case is itself apparent from the fact that it was month of December the P.O., being at remote area, by the side of river



Gandak/Bagmati, there would have been dense fog, chilly winter season and, in the background of the deficiency at the end of investigating officer who failed to locate whether the house of the informant was duly electrified and, there was lightning at the time of occurrence, in the aforesaid background, proper identification of the miscreants was not at all possible, whereupon, identifying the appellant as one of the accused is nothing but simply an imagination and further suggests been malafidely victimised.

It has also been submitted that two persons have been named namely Sanjay and the appellant Meghu without having been proper identification with regard to part having played by them during course of commission individually and the cumulative effect thereof, did not justify the conviction and sentence recorded by the learned Court below.

Learned Additional PP while refuting the submission made on behalf of learned counsel for the appellant has submitted that learned counsel for the appellant has rightly argued that enmity is a double edged sword, may be a cause of false implication it may be a reason for a commission of an offence. The Court has to trace out after proper adjudication, the truth, so far facts of the instant case is concerned, after proper scrutiny of the evidence is being taken together with the suggestion whatsoever



been given at the end of appellant, it is evident that neither occurrence has been denied nor the theme of animosity and so, in the aforesaid background, when the allegation part is considered, the same is found properly substantiated. Accordingly, the judgment impugned did not attract interference.

Now coming to the classification of the witnesses, it is apparent that PW 2 Nirmla Devi, PW-3 Shail Devi, PW-4 Ramashray Manjhi and PW-5 Raghunandan Sada have not substantiated the case of prosecution whereupon they all have been declared hostile.

PW-1 is the father of PW-6, the informant and so, it is evident that only father and daughter are the witness of the occurrence. It is to be borne in mind, that the PO is the house of the informant and so, their status happens to be but natural.

PW-7 is I.O.

PW-6, the informant has deposed that on the alleged date and time of occurrence, she was at her *maika* alongwith her son aged about 5 months namely Rahul. At that very moment, accused Sanjay Sahni and Meghu Sahni came and forcibly snatched away her son Rahul from her, on the pretext that her husband Nawab Thakur is instrumental in their arrest and on account thereof, they are taking revenge. They took away her



child. Her child has not yet been traced out. She is very much apprehensive that her son might have been murdered. Her mother Dantari Devi, Father Ramyash Thakur, sister Champa Kumari and brother Dhiraj Thakur have witnessed the aforesaid occurrence. In the night itself, she had informed her father in law, Ramekwal Thakur, who came and then, in the following morning, she alongwith her father, father in law had gone to police station where, she placed a written report before the police. She had put her R.T.I over this. It has further been disclosed that at the time of occurrence, her husband was in custody at Motihari Jail.

During cross-examination at para 6, she has stated that her marriage was solemnized in the year 2009 and thereafter, she had gone to her *sasural*. She also disclosed that she used to visit her *maika* from *sasural* lying at village Barahi She has stated that for the last one year, she is residing at her *maika*. In para 8, she has stated that at the time of occurrence, there was only one room available at her *maika*. In para 9, she has disclosed that being illiterate, she is unable to disclose the English Calander but it was 'Aghan'. In para 10, she has stated that after taking meal at about 7 PM she was sleeping at Varandah. At para 11, there happens to be boundary of house. In para 12, she has stated that since 6-7 months prior to the occurrence, her husband was under custody. She is



staying at her *maika* since one year prior to the occurrence. She begotten her son at her *maika*. Her husband was in custody relating to a *dacoity* case. She has further stated that she has got two issues, a daughter aged about 4 years namely Manisha and Rahul, son aged about 5 months. She has further stated that neither her husband nor her father has animosity with others. In para 14, she has stated that at the time of occurrence, it was dark night but there was electric light in her *maika*. In para 17, she has stated that when her child was snatched from her, she raised alarm. 15-20 persons came hearing her alarm, she has named Fantu Manjhi, Ram Ashray Manjhi, Kunti Devi, daughter in law of Kunti Devi in para 17, she has stated that she along with her parents had tried to apprehend the accused but could not succeed. In Para 19, she has stated that on the following morning at about 7 AM they reached at police station to lodge the case. In para 21, 22, 23, 24 and 25, there happens to be cross-examination with regard to place of residence of the accused, distance in between her *sasural* as well as village of the accused, manner of identification. She has further stated that she had seen the accused twice before the occurrence while she was staying. In para 26, attention has been drawn towards the previous statement over electric light available at the time of occurrence. In para 27, she has stated that both the accused have



concealed their face. She has further stated that electric line was available since the evening. In para 28 and para 29 again her attention has been invited over previous statement. She has stated that accused persons snatched away her child at about 9 PM. Then at para 31 and 32, she has denied that her husband is himself a criminal and in the aforesaid background, he had got a large number of enemies and one of them might have committed the said occurrence but, on mere illusion these accused persons have been named in this case.

PW-1 is the father has stated that on the alleged date and time of occurrence, he was at his house. Chanda Devi is his daughter who was at his place on the date of occurrence. At that very time, Meghu Sahni and Sanjay Sahni came and snatched away Rahul from his daughter and then, they both fled away. Since then the boy has not been traced out, identified the accused. During the course of cross-examination at para 4 he has stated that he was at his house was sitting at Darwaja of the house since evening. He has taken meal at about 10.30 PM. After taking meal he slept. Then said that on the date of occurrence right from 6-7 PM to 10 PM only two persons namely Sanjay Sahni and Meghu Sahni, had come. In para 5 he has stated that at the time of occurrence, he had raised an alarm. He had tried to apprehend the



accused. It was dark night. So many persons came but he is unable to disclose their name. Husband of his daughter namely Nawab Thakur is under custody and was also under custody at the time of occurrence. He informed the police on the following day then he denies his suggestion that these accused persons had wrongly been named as an accused.

PW-7 is the I.O. He has stated that after registration of the case, he started investigation. He had gone to the place of occurrence which happens to be *maika* of informant. Recorded further statement of the informant as well as statement of her mother. Inspected the place of occurrence which happens to be hatched house of father of the informant. There happens to be no gate affixed. Then detailed the inner portion of the house. Shown boundary, North – Jai Kishor Rai and barren land, South – thatched house of Sakal Thakur, East – house of Raghunath Thakur, West – Road, also recorded the statement of different villagers. Received supervision report. He could not be able to locate the abducted child. After completing investigating submitted charge-sheet.

At para 5, 6, 7, 8 there happens to be previous statement of respective witnesses who have been declared hostile. During cross-examination at para 9 he has stated that he had not recorded



the statement of the persons having their houses in the boundary as they were not present. In para 10 he has stated that he has arrested Meghu Sahni and Sanjay Sahni five days after the occurrence from their house.

In para 11 he has admitted that during course of investigation, he had not investigated over electrification of house and power was supplied at the occurrence. At Para 12-13 there happens to be contradiction relating to PW1 and PW6 respectively.

From the evidence available on the record, it is evident that appellant was arrested from his house on 05.12.2013 i.e. only one day after registration of the case. It is further evident from the evidence of PW 7 and that he had not inspected the place of occurrence in such manner to locate whether there was electrification or not, and, whether power was running at the time of alleged occurrence. It is further evident that it was middle of the Winter Season. Although, there happen to be not cross-examination so, it could not be said that the area would have been densely fogged. It is also manifest, from the evidence of PW -6, that both the accused persons came have their face properly covered. From paragraph 21, it is evident that she had seen the accused persons twice before commission of the occurrence, loitering near about her house. Furthermore, manner whereunder she had



disclosed the native place of the accused persons is a circumstance suggesting both the parties well conversed as not controverted at the end of appellant to each other. In the aforesaid background, there there could not be difficulty in identification of an accused by voice, by gait, physical feature. And so far as appearance of PW-1 is concerned, he has not been tested on the evidence together.

And that it is the quality not the quantity in order to prove the fact in issue. is the basic feature of the Evidence Act, duly recognized under Section 134 permits that trustworthiness of a sole witness would be suffice to record conviction. Admittedly, the occurrence has not been denied at the end of appellant. Animosity is also there. While suggesting informant PW6, while cross-examining PW6, appellant could not be able to shake her testimony, at least over identification. Furthermore, the appellant had not challenged that he was not at all under judicial custody at any time before, muchless, at the instance of husband of the informant. It is needless to say that only father and daughter deposed on merit of the case, happens to be natural witness, being the place of occurrence as house. It is also evident from their testimonies, that they stood the cross-examination fairly, and



succeeded in substantiating the occurrence along with proper identification of the miscreant.

From the judgment impugned, it is evident that once the court has identified the accused to be guilty for an offence punishable under Section 364 of the IPC then in that circumstances, would not have convicted and sentenced for an offence punishable under Section 363 of IPC as, Section 364 IPC engulf Section 363 of IPC whereupon Section 363 IPC would not have its separate application. So the conviction and sentence recorded by the learned lower court relating to Section 363 IPC is erased and to that extent, the judgment impugned is allowed retaining the conviction and sentence relating to offence punishable under Section 364 of IPC and the appeal is dismissed to that extent. The appellant is under custody which he will remain till saturation of the period of sentence.

First and last page of the judgment be handed over to the learned *Amicus Curiae* for the needful.

(Aditya Kumar Trivedi, J)

Anjula/
S. Katyayan/-

AFR/NAFR	NAFR
CAV DATE	NA
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