

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.960 of 2013

Arising Out of PS. Case No.-565 Year-2009 Thana- LAKHISARAI District- Lakhisarai

1. Hari Kishan Yadav , son of Late Ramjee Yadav
 2. Vikash Kumar, son of Hari Kishan Yadav
 3. Laxmi Yadav, son of Late Bijay Yadav
- All are residence of Village- Lakhochak, P.S. Chanan, District- Lakhisarai

... .. Appellants

Versus

The State Of Bihar

... .. Respondent

with

CRIMINAL APPEAL (DB) No. 1082 of 2013

Arising Out of PS. Case No.-565 Year-2009 Thana- LAKHISARAI District- Lakhisarai

Shashi Bhushan Yadav, son of Late Bijay Yadav, residence of Village -
Lakhochak, P.S. - Chanan, District - Lakhisarai

... .. Appellant

Versus

The State Of Bihar

... .. Respondent

with

CRIMINAL APPEAL (DB) No. 71 of 2014

Arising Out of PS. Case No.-565 Year-2009 Thana- LAKHISARAI District- Lakhisarai

Shantosh Yadav, son of Late Bijay Yadav, residence of Village- Lakhochak,
P.S.- Chanan, District - Lakhisarai.

... .. Appellant

Versus

The State Of Bihar

... .. Respondent

Appearance :

(In CRIMINAL APPEAL (DB) No. 960 of 2013)

For the Appellant/s	:	Shri Rajesh Kumar Sinha, Advocate
For the Respondent/s	:	Shri Ajay Mishra, APP
For the informant	:	Shri Pankaj Kumar Sinha, Advocate
		Shri Rabi Bhushan, Advocate
		Smt. Rakhi Kumari, Advocate



(In CRIMINAL APPEAL (DB) No. 1082 of 2013)

For the Appellant/s : Mr. S.M. Ashraf, Advocate
For the Respondent/State: Shri Ajay Mishra, A.P.P.
For the informant : Shri Pankaj Kumar Sinha, Advocate
Shri Rabi Bhushan, Advocate
Smt. Rakhi Kumari, Advocate

(In CRIMINAL APPEAL (DB) No. 71 of 2014)

For the Appellant/s : Shri Surendra Singh, Sr. Advocate
Shri Krishna Chandra, Advocate
For the Respondent/State: Shri Ajay Mishra, A.P.P.
For the informant : Shri Pankaj Kumar Sinha, Advocate
Shri Rabi Bhushan, Advocate
Smt. Rakhi Kumari, Advocate

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

and

HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

Date : 16-08-2019

1. Five appellants in aforesaid three appeals were tried together and convicted and sentenced by the common judgment of the trial court, and as such, all the three appeals were taken up together under the heading “For Hearing” and are being disposed of by this common judgment.

2. All the appellants by judgment dated 13.09.2013 were convicted for offence under Section 364 of the Indian Penal Code, 1860 (hereinafter referred to as the “I.P.C.”). By order dated 17.09.2013 all the aforesaid appellants under Section 364 of the I.P.C. were sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs. 15,000/- each. In case of default in payment of fine they were directed to further undergo rigorous imprisonment for one year each. The



judgment of conviction and sentence was passed by Shri Chandra Bhushan Kumar, learned Adhoc Additional District & Sessions Judge 3rd , Lakhisarai (hereinafter referred to as “trial judge”) in Sessions Case No. 494 of 2011 (arising out of Lakhisarai (Chanan) P.S. Case No. 565 of 2009).

3. The case has been initiated on the basis of written complaint filed by Manohar Saw – P.W. 8 (father of the victim). The written complaint was filed before the Superintendent of Police, Lakhisarai. In the written complaint it was disclosed that on 04.11.2009 at about 9.00 P.M. in night his son – Sonu Kumar (victim) was kidnapped. He was wearing half white shirt and black full pant. He was having black complexion and aged about 09 years. There was cut mark on the right cheek just below the eye. In the written complaint it was further disclosed that on 07.11.2009 on his mobile a ransom demand of Rs. 500000/- was made from mobile no. 9504963018. The demand was made on the mobile phone of informant. The reason for the occurrence was explained by the informant in its written report that he was having land dispute with [1] Hari Kishan Yadav {appellant no. 1 in Cr. Appeal (D.B.) No. 960 of 2013}, [2] Shashi



Bhushan Yadav {sole appellant in Cr. Appeal (D.B.) No. 1082 of 2013}, [3] Lakmi Yadav {appellant no. 3 in Cr. Appeal (D.B.) No. 960 of 2013} and [4] Shantosh Yadav [sole appellant in Cr. Appeal (D.B.) No. 71 of 2014]. The informant raised suspicion against those persons in the complaint petition and requested to investigate the case. The said written report was having signature of P.W. 8. The said written report was dated 08.11.2009. The said written report was forwarded to Lakhisarai Police Station and on 09.11.2009 on the basis of said written report a formal F.I.R. vide Lakhisarai (Chanan) P.S. Case No. 565 of 2009 was registered at 9.45 A.M. for the offence under Section 364(A) read with Section 34 of the I.P.C. against:-

(1) Hari Kishan Yadav [Appellant no. 1 in Cr. Appeal (D.B.) No. 960 of 2013],

(2) Shashi Bhushan Yadav (sole appellant in Cr. Appeal (D.B.) No. 1082 of 2013),

(3) Laxmi Yadav [appellant no. 3 in Cr. Appeal (D.B.) No. 960 of 2013] and

(4) Shantosh Yadav [sole appellant in Cr. Appeal (D.B.) No. 71 of 2014].

4. After registering F.I.R. the case was investigated.

The Investigating Officer recorded re-statement of the informant and statement of other witnesses and subsequently,



after getting approval from his superior official on 22.02.2010
charge sheet was submitted against:-

- (1) Hari Kishan Yadav,
- (2) Laxmi Yadav
- (3) Dinesh Yadav,
- (4) Sudhir Yadav,
- (5) Uday Yadav

keeping investigation pending against others. On the basis of charge sheet on 16.04.2010 the learned Chief Judicial Magistrate, Lakhisarai took cognizance of the offence. Thereafter, on 28.05.2010 supplementary charge sheet was submitted against Shantosh Yadav [sole appellant in Cr. Appeal (D.B.) No. 71 of 2014] who was named as accused in the F.I.R. keeping investigation further pending and again 2nd supplementary charge sheet was submitted 19.03.2011 against Vikash Kumar Yadav [appellant no. 2 in Cr. Appeal (D.B.) No. 960 of 2013]. Meaning thereby that altogether seven accused persons were forwarded as accused by the Police. After submission of supplementary charge sheet the case was committed to the court of Sessions on 03.06.2011 and it was numbered as Sessions Case No. 494 of 2011.

5. In the case on 18.11.2011 charges were framed against all the accused persons under Section 363, 364 and 365 of the I.P.C. which was denied by them and all the



accused persons claimed to be tried however after commencement of trial three accused persons absconded and as such, case of three accused namely: (1) Dinesh Kumar Yadav, (2) Uday Yadav and (3) Sudhir Yadav was separated by order dated 10.09.2013.

6. During the trial to establish its case on behalf of the prosecution altogether ten witnesses were examined. Out of ten witnesses, informant (father of the victim) Manohar Saw is P.W. 8, P.W. 1 – Rajeev Kumar Saw (brother of the informant and uncle of victim), P.W. 6 - Pinky Devi (mother of the victim) and P.W. 7 -Putul Devi (aunt of the victim and wife of P.W. 1) were examined as eye witnesses to the occurrence, whereas, P.W. 4 -Sabo Devi (grandmother of the victim) is a hearsay witness. P.W. 3 (Ram Rajak) an independent witness though was examined as witness, his evidence has got no relevance for adjudication of the present case. P.W. 2 (Sudama Kumar) who was said to be friend of the victim, P.W. 5 (Dabloo Mahto) and P.W. 9 (Sohan Mahto) since did not support the prosecution case were declared hostile. The Investigating Officer of the case namely Shri Atul Kumar Mishra has been examined as P.W. 10.



7. After closure of prosecution evidence circumstances and evidences collected during the trial against accused persons were explained to them and their statement under Section 313 of the Cr.P.C. was recorded on 10.07.2013. The learned trial judge on the basis of evidence on record has passed impugned judgment of conviction and sentence which has been assailed in the present appeal.

8. Shri Surendra Singh, learned senior counsel, assisted by Shri Krishna Chandra, learned counsel for the appellant in Cr. Appeal (D.B.) No. 71 of 2014 (Shantosh Yadav vs. The State of Bihar) has argued that despite the fact that prosecution has not established its case beyond all reasonable doubts, the learned trial judge, in a mechanical manner, perhaps on the basis of so -called confessional statement of one of the co- accused has passed judgment of conviction and sentence, which is not sustainable in the eye of law. He submits that of -course P.W. 8 (father of the victim) during evidence has deposed as if in his presence his son was kidnapped by accused persons, surprisingly in the written report which was filed by him after about 04 days from the date of occurrence i.e. on 8th November, 2009 he had not at



all whispered as if he was witness to the occurrence or not , rather in the written report which is the basis of the formal F.I.R. he has only raised suspicion against four accused persons including Shantosh Yadav {sole appellant in Cr. Appeal (D.B.) No. 71 of 2014} that too due to land dispute. He has argued that had it been a case that kidnapping had taken place on 04.11.2009 in presence of P.W. 8 who was none else but father of the victim, the father (P.W. 8) would have immediately approached the Police and informed and described regarding involvement of accused persons, however though after four days he filed written complaint before Superintendent of Police he had not at all described as if he was witness to the occurrence or not . He further submits that P.W. 8 in paragraph 1 of his evidence has stated that he had gone to witness Cycle race near पुस्तकालय from where his son was kidnapped by accused persons. He specifically named altogether four accused persons. This witness further stated that he chased the accused persons but he failed to apprehend them, then he returned back to his house and thereafter, he described regarding entire occurrence to P.W. 1 - Rajeev Kumar Saw (brother of informant), P.W. 4 (grandmother of



the victim), his wife (P.W. 6), wife of his younger brother (P.W. 7) and one Gautam Kumar, who has not been examined. Shri Singh submits that this indicates that P.W. 1, 4, 6 and 7 were informed by P.W. 8 and as such, they were not eye witness to the occurrence. However, during the trial P.W. 1, P.W. 4, P.W. 6 and P.W. 7 have emerged as if they too had seen the occurrence of kidnapping of the victim boy. He submits that though P.W. 8 (informant), P.W. 1, P.W. 4, P.W. 6 and P.W. 7 during evidence have claimed to be eye witnesses to the occurrence, their attention to their previous statement was drawn and contradiction was also taken while examining the Investigating Officer. The fact has come that statement made by the aforesaid witnesses claiming to be eye witness was never stated by them before the Investigating Officer. Shri Singh has also drawn our attention to the evidence of P.W. 8 to the extent that P.W. 10 (Investigating Officer) has stated that during investigation none of the witnesses had come forward claiming to be eye witness to the occurrence, and as such, it has been argued that claim of prosecution that victim boy was kidnapped in presence of so-called eye witnesses is not at all believable. He further submits that Investigating



Officer in the present case i.e. P.W. 10 has done nothing and in complete perfunctory manner he has conducted investigation. He further submits that Investigating Officer, surprisingly during the trial, had produced mobile phone of the informant and in his evidence he himself has accepted that during the evidence itself the informant had handed over the said mobile to him and P.W. 10 (Investigating Officer) simply produced the mobile before the court below which was marked as material Ext. 1 of- course with objection. The Investigating Officer during evidence has stated as if he had heard the recording in the said mobile and came to know regarding the voice of the accused persons however neither the mobile was formally seized during investigation nor any recording was sent to the F.S.L., and as such, there is no reason for taking into account the evidence of said mobile. Moreover, he has argued that detection of voice of the accused persons is not having connection with the present appellant or either of the appellants in the present case. P.W. 8 in paragraph 1 of his evidence has stated that he could identify the voice of two accused namely: Uday Yadav and Sudhir Yadav whose cases have already been separated. On aforesaid grounds it has been



argued that the learned trial judge without any cogent evidence on record has passed judgment of conviction and sentence which is liable to be set aside.

9. Shri Rajesh Kumar Sinha, learned counsel appearing on behalf of the appellant in Cr. Appeal (D.B.) No. 960 of 2013 and Mr. S.M. Ashraf, learned counsel appearing in Cr. Appeal (D.B.) No. 1082 of 2013 have adopted the argument advanced by Shri Surendra Singh, learned senior counsel appearing in Cr. Appeal (D.B.) No. 71 of 2014. Adopting argument of Shri Singh, learned senior counsel they have further argued that it is admitted case that there was animosity in between the appellants' side and family of the informant and it appears that in a case of no evidence they have been fabricated as accused due to animosity.

10. Shri Ajay Mishra, learned Additional Public Prosecutor though has opposed the appeal, was not in a position to properly defend the prosecution case.

11. Besides hearing learned counsel for the parties, we have minutely examined entire evidence on record and after examining the same *prima facie* we are in agreement with submission of learned counsel for the appellants that the



learned trial judge has committed error in passing impugned judgment of conviction and sentence. However, before proceeding it is necessary to discuss the evidence which has been brought on record.

12. The case has been initiated on the basis of written report submitted by P.W. 8 (Manohar Saw) which was addressed to S.P., Lakhisarai. In the written report informant had raised only suspicion against four accused persons however during evidence he has come out with a case as if he had seen the actual occurrence. P.W. 8 in his evidence has stated that occurrence had taken place on 04.11.2009 at about 9.00 in the night. He stated that near पुस्तकालय (library) Cycle race competition was going on and his son -Sonu Kumar was witnessing the race. The said race concluded at about 9.30 in night. The informant was thereafter returning and he saw that his son- Sonu Kumar was kept on a motorcycle by Bhushan Yadav (Shashi Bhushan Yadav), sole appellant in Cr. Appeal (D.B.) No. 1082 of 2013 and Shantosh Yadav [sole appellant in Cr. Appeal (D.B.) No. 71 of 2014] and he started moving. Bhushan Yadav had kept his son sitting on motorcycle. On another motorcycle Shantosh



Yadav and Rajesh Yadav (not made accused) were there and they carried his son on motorcycle towards jungle. The informant said that he chased the accused persons to some extent and thereafter he returned back. After returning to his house he explained about the occurrence to his brother – Rajeev Kumar Saw (P.W.1), mother (P.W. 4), wife (P.W. 6) and भवह (wife of his younger brother) and also to his brother-in-law namely: Gautam Kumar (not examined). He further stated that thereafter along with family members he again went in search of his son – Sonu Kumar however efforts went in vain. The informant -P.W. 8 further stated that thereafter he remained in his house for whole night. In the morning he along with his brother- Rajeev Kumar (P.W.1) went to Chanan Police Station and explained everything however, Daroga ji asked him to go back and search for his son. On 7th November, 2009 informant went to S.P., Lakhisarai and gave his statement which was recorded by S.P. Sahab. The informant – P.W. 8 further stated that accused Sudhir Yadav and Uday Yadav (case of both accused separated) on mobile demanded Rs. 5,00000/-. On his mobile having no. 9631146123 from mobile no. 9504963018 demand of ransom of Rs. 5,00000/-



was made by Uday Yadav and Sudhir Yadav. He claimed that he could identify the voice of both the accused on mobile which had already been recorded. The informant/ P.W. 8 stated that he explained all those facts to S.P. Sahab and he stated that recorded voice was also heard by S.P. Sahab. He identified his signature on written report, which was marked as Ext. 1. It is pertinent to be noted here that all those facts were never explained by the informant in the written report. It is true that F.I.R. or *fardbyan* or written report may not be considered as encyclopedia disclosing every fact but in a case in which minor son of informant was kidnapped on 04.11.2009 it appears completely un-natural that even after four days he did not take any proper step for searching his son and even thereafter when he filed written complaint before Police he is completely silent as if occurrence had taken place in his presence or not. This creates serious doubt on the conduct of P.W. 8. Besides this, the fact which he has stated in his examination- in- chief was never disclosed by him even during his further statement or re- statement. Due to this reason attention of this witness was drawn in respect of his previous statement in paragraph 16 of his cross-examination.



At the time of examination of Investigating Officer (P.W. 10) corroboration was taken and P.W. 10 (Investigating Officer) Atul Kumar Mishra in paragraph 10 of his cross- examination has clarified that those facts were never explained by P.W. 8 during investigation before Police. Had it been a case of minor deviation matter would have been different but in a case in which P.W. 8 (father of the victim) is claiming that in his presence his son was kidnapped and taken away on motorcycle, who were chased, even after four days while filing written report before Police he had not whispered as if he was eye witness to the occurrence. This is sufficient to draw an inference that the evidence of P.W. 8 lacks credence. In similar manner, P.W. 1 - Rajeev Kumar Saw (brother of informant and uncle of the victim), P.W. 6 - Pinky Devi (mother of the victim) and P.W. 7 -Putul Devi (wife of P.W. 1 and aunt of victim) in their examination -in- chief have claimed to be eye witness to the occurrence and named all the appellants i.e. about their participation in the kidnapping but during investigation they had not stated those facts and as such, there is no reason to place much reliance on their evidence. Moreover, in paragraph 1 of P.W. 8 (Manohar Saw)



it has come that Manohar Saw was the only witness in whose presence the accused persons had kidnapped the victim and while he returned back to his house he narrated about the occurrence to those witnesses, and as such, on examination of their entire evidence it is difficult to come to conclusion that they are having any credence.

13. P.W. 3 (Ram Rajak) who was an independent witness though was examined as prosecution witness, in his evidence there is nothing to connect culpability of either of the appellants in the case nor he has whispered anything regarding the case.

14. P.W. 4 - Sabo Devi (grandmother of the victim) in her evidence has stated that she was informed by someone regarding the occurrence however the person who gave information to P.W. 4 has not come forward and as such, his hearsay evidence may not be taken into account. This witness P.W. 4 in paragraph 4 of her cross examination has disclosed regarding animosity with the appellants. P.W. 4 in paragraph 4 of her cross examination has admitted that there was animosity in between the informant's side and accused persons, and as such, the submission advanced by learned



counsel for the appellants that due to animosity there is possibility of implication of the appellants in the present case may not be ruled out.

15. Other witnesses P.W. 5 (Dablu Mahto) and P.W. 9 (Sohan Mahto) have been declared hostile. Of -course some of the witnesses have stated that they got information from one Gautam, but prosecution has not produced Gautam to support the version of prosecution. On examination of the evidence of P.W. 10 (Atul Kumar Mishra) the Investigating Officer we are of opinion that the Investigating Officer has miserably failed to conduct proper investigation in the present case. In evidence he stated that on 04.11.2009 he was Officer-in- charge in Chanan Police Station and he identified the forwarding made by him on the written report, which was marked as Ext. 2 and he stated that on the basis of the written report formal F.I.R. was drawn. Thereafter, he re-examined the informant and recorded statement of other witnesses. He, during the evidence, voluntarily produced a mobile phone surprisingly before the trial court and the trial court marked the said mobile as material Ext. No. 1. In paragraph 7 of his cross- examination he has stated that the said mobile phone



was handed over to him by the informant – P.W. 8 at the time of evidence itself and immediately thereafter he produced the said mobile. He in paragraph 8 of his cross- examination has clarified that he had not bothered to obtain any call detail in respect of the said mobile neither he had prepared any seizure list in respect of the said mobile. Of- course, he deposed that the said mobile was having some conversation, even if there was conversation it was not heard by the trial court during the trial. Accordingly, production of said mobile was having no relevance for adjudication by the trial court. In paragraph 6 of his evidence P.W. 10 stated that he recorded confessional statement of Dinesh Yadav (trial separated). P.W. 10 further stated that in confession Dinesh Yadav had confessed his guilt and disclosed regarding participation or association of other accused persons however it is not a case of prosecution that confession recorded by Investigating Officer – P.W. 10 of co-accused: Dinesh Yadav led to recovery of any fact which was within the knowledge of accused persons, and as such, it was rightly submitted by Shri Surendra Singh, learned senior counsel that said confession was inadmissible under Section



32 of the Evidence Act. Besides this, even such confessional statement has not been got exhibited.

16. On examination of entire evidence, we are of opinion that though prosecution has not been able to establish its case beyond reasonable doubts. The learned trial judge in a mechanical manner has passed judgment of conviction and sentence. On going through the evidence it is evident that none had seen the occurrence. There is no plausible explanation as to why much belatedly written information was filed before the Police and even in the written report, which is the basis of F.I.R. no disclosure has been made as if informant or any other witness had seen the occurrence. The so-called eye witnesses who have deposed during the trial as if in their presence the boy was kidnapped had never made any such statement during investigation and for the first time during trial they have come out with a new case.

17. In view of the facts and circumstances, we are of opinion that impugned judgment of conviction and sentence can not be approved. Accordingly, by way of extending benefit of doubt, it is desirable to interfere with the judgment of conviction and sentence and judgment of conviction dated



13.09.2013 and sentence dated 17.09.2013 passed by Shri Chandra Bhushan Kumar, learned Adhoc A.D.J. 3rd, Lakhisarai in Sessions Case No. 494 of 2011 [arising out of Lakhisarai (Chanan) P.S. Case No. 565 of 2009] is hereby set aside and all the appellants are acquitted from the charge. All the three appeals are allowed.

18. In view of the fact that impugned judgment of conviction and sentence has been set aside and all the appellants are inside jail, it is hereby directed to release all the appellants namely: Hari Kishan Yadav, Vikash Kumar, Laxmi Yadav [Cr. Appeal (D.B.) No. 960 of 2013], Shashi Bhushan Yadav [Cr. Appeal (D.B.) No. 1082 of 2013] and Shantosh Yadav [Cr. Appeal (D.B.) No. 71 of 2014] forthwith, if not wanted in any other case.

(Rakesh Kumar, J)

(Anjani Kumar Sharan, J)

praful/-

AFR/NAFR	AFR
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