

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.670 of 2017

Arising Out of PS. Case No.-130 Year-2012 Thana- JHAJHA District- Jamui

Shiv Nandan Yadav @ Nandan Yadav @ Shivanand Yadav, Son of Sitaram
Yadav, Resident of Village- Ketru, Nawada, P.S. Gidhaur, District- Jamui.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Jagdish Prasad-Advocate

For the Respondent/s : Mr. Sujit Kumar Singh-A.P.P.

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
CAV JUDGMENT

7-03-2019

Having unsuccessful attempt to kidnap the

informant as alleged by the miscreants so named including the
appellant, out of whom, one of the culprit namely Ashok Yadav
was apprehended at the spot and for that, on the fard-bayan of
Manoj Kumar Mandal, Jhajha P. S. Case No.130 of 2012 was
registered, investigated upon and during course thereof, one of
the accused namely Shiv Nandan Yadav @ Nandan Yadav @
Shivanand Yadav (appellant) became absconder and that being
so, chargesheet was submitted against accused Ashok Yadav,
Mukesh Yadav and Shambhu Ravidas, who faced the trial
bearing Sessions Trial No.350 of 2013 before the Court of
Additional Sessions Judge-1st, Jamui and vide judgment dated
03.08.2015, one of the accused namely Mukesh Yadav was
acquitted while Ashok Yadav and Shambhu Ravidas were



convicted and for that, Cr. Appeal (S.J.) No.674 of 2015 at the end of Ashok Yadav and Cr. Appeal (S.J.) No.780 of 2015 at the end of Shambhu Ravidas @ Das have been preferred. After presence of Shiv Nandan Yadav @ Nandan Yadav @ Shivanand Yadav (appellant), he has been proceeded under Sessions Trial No.350A of 2013, which has also been tried by the Additional Sessions Judge-1st, Jamui, who vide judgment of conviction and sentence dated 27.01.2017, found him guilty for an offence punishable under Section 364/ 34 of the I.P.C. and sentenced for, whereupon Cr. Appeal (S.J.) No.670 of 2017 has been filed. Though, both the Sessions Trial sailed separately even then, as the matter has cropped up from the same P. S. Case Number on account thereof, the same has been heard analogously, but the judgments are being passed separately, however, on the same day.

2. As stated above, appellant Shiv Nandan Yadav @ Nandan Yadav @ Shivanand Yadav has been found guilty for an offence punishable under Section 364/34 of the I.P.C. and sentenced to undergo R.I. for ten years as well as to pay fine appertaining to Rs.5,000/- and in default thereof, to undergo S.I. for one month, additionally, by the 1st Additional Sessions Judge, Jamui in Sessions Trial No.350A of 2013.



3. Informant, Manoj Kumar Mandal (PW-1), a Government School Teacher gave his fard-bayan on 14.09.2012, disclosing therein that after closing his school, while he was in a way to his house over his motorcycle bearing Registration No.BR-46A-9891 and as soon as reached at Chhena Mor, three motorcycle borne criminals dashed against him from behind as a result of which, he fell down. After parking their motorcycle, all the miscreants got down, came to him, assaulted him and then, they tied his eye, put helmet and then, got him seated in the middle and then, on the point of pistol, they started motorcycle and proceeded there from. They have also spoken to provide cash appertaining to Rs. Ten Lacs. One of them, took away his mobile, motorcycle. When they came near Laherian Mor, fortunately the cloth by which his eye was tied, opened and seeing the person, raised alarm, whereupon the persons chased. Seeing them, the Shiv Nandan Yadav @ Nandan Yadav @ Shivanand Yadav, who was driving motorcycle, lost balance as a result of which, they all fell down. Shiv Nandan Yadav @ Nandan Yadav @ Shivanand Yadav after brandishing pistol, managed to escape while the another culprit along with his motorcycle was apprehended by the villagers. Police was informed and after arrival of the police, they were handed over.



4. On the basis of the fard-bayan of Manoj Kumar Mandal, Jhajha P. S. Case No.130 of 2012 was registered followed with an investigation and during course thereof, it is evident that from the possession of Shambhu Ravidas @ Das, motorcycle belonging to informant, was recovered and so, chargesheet was submitted against Ashok Yadav, Mukesh Yadav and Shambhu Ravidas, keeping the investigation pending against the appellant, on account of his absence, who faced the trial, out of whom, Mukesh Yadav got acquittal while Ashok Yadav and Shambhu Ravidas were convicted under Sessions Trial No.350 of 2013. After appearance of Shiv Nandan Yadav @ Nandan Yadav @ Shivanand Yadav (appellant), chargesheet was submitted against him, proceeded with the trial, meeting with the ultimate result, subject matter of instant appeal.

5. Defence case, as is evident from mode of cross-examination as well as statement recorded under Section 313 of the Cr.P.C. is that of complete denial. Furthermore, it has been pleaded that on the alleged date and time of occurrence, he was present before the Court relating to G.R. Case No.796 of 2004 and to substantiate the same, one witness Murari Yadav has been examined along with exhibit of relevant documentary evidence.

6. Altogether eight PWs have been examined on



behalf of prosecution, who are PW-1, Manoj Kumar Mandal, PW-2, Raj Kumar Ranjan, PW-3, Dilip Kumar, PW-4, Bajrangi Yadav, PW-5, Naresh Yadav, PW-6, Upendra Kumar Yadav, PW-7, Shatrughan Kuma and PW-8, Vikram Kumar. Because of the fact that during course of conduction of trial, the original record had already been before the High Court relating to Cr. Appeal (S.J.) No.674 of 2015, Cr. Appeal (S.J.) No.780 of 2015, on account thereof, the photo copies of the relevant documents have been taken on record as X, X/1, Y, Z for identification. In likewise manner, one DW-1 namely Murari Yadav has been examined as well as Exhibit-A, order sheet of G.R. Case No.796 of 2004, judgment in connection with G.R. Case No.796 of 2004, Exhibit-B and Hazri in G.R. Case No.796 of 2004 as Exhibit-C have been made an exhibit.

7. The learned counsel for the appellant while challenging the judgment impugned has submitted that the finding arrived at by the learned lower Court is not at all maintainable on account of non-appreciation of law as well as facts in right perspective. In order to support such plea, it has been submitted that right from initial version, it is evident that both parties were known to each other even then, there happens to be no disclosure that the accused persons ever tried to conceal



their identity. None of them have got criminal antecedent. None has deposed that prosecution party was rich, who could fetch money on demand. It has also been submitted that none other than PW-1 is an eye witness. When the evidence of PW-1 is taken, it is apparent that it suffers from absurdity. Manner whereunder the story has been advanced, is nothing, but gives clear cut inspiration of false implication, otherwise the accused persons would not have allowed the victim to act in a manner detrimental to their interest. It has also been submitted that allegation has been attributed that the appellant Shiv Nandan Yadav @ Nandan Yadav @ Shivanand Yadav was driving the motorcycle over which, informant (PW-1) was taken while Ashok Yadav was pillion rider having pistol in his hand. There happens to be no disclosure at the end of the prosecution where that pistol had gone, when they have fallen from the motorcycle. On the other hand, it has been said that appellant Shiv Nandan Yadav @ Nandan Yadav @ Shivanand Yadav took out pistol, brandished it and on that very pretext, succeeded in his escape. Furthermore, neither the independent witnesses have supported the prosecution version, nor the evidence of PW-2 and PW-3 are of worth credence. As such, judgment impugned is unsustainable.



8. Then, it has been submitted that at an initial stage, there happens to be disclosure with regard to demand of Rs. Ten Lac as a ransom. Had there been, then in that circumstance, all of them would have been charged for an offence punishable under Section 364A of the I.P.C. From the L. C. Record, it is evident that non-framing of charge under Section 364A of the I.P.C. was never raised and so, prima facie the demand of ransom has gone and that happens to be reason behind that PW-1, during course of his evidence before the Court, have not stick over the same. Now, coming to finding recorded by the learned lower Court relating to Section 364 of the I.P.C., the learned counsel has submitted that the ingredients for attracting Section 364 I.P.C. is A) there should be kidnapping or/ abduction, B) for the purpose of committing murder or C) the victim be kept at such place where the victim ultimately met with death. Non of the ingredients is found duly substantiated. Moreover, when the evidence in its entirety is taken up, it is evident that the prosecution case suffers from severe pit falls whereupon, it is fit to be disbelieved. Hence, the judgment impugned is fit to be set aside.

9. The learned Additional Public Prosecutor while supporting the finding recorded by the learned lower Court has



submitted that taking away the victim over motorcycle after dashing down while he was in a way to his house from the school and further, taking him away on the pretext of pistol is sufficient to justify the finding recorded by the learned lower Court. Asking for ransom is a motive for the same, which though given us during course of trial will not adversely affect the prosecution case. More particularly in the background of the fact that meeting with accident at Lahernian Mor on account of seeing the people chasing them after hearing alarm of the victim (PW-1) and during course thereof, though appellant managed to escape on the pretext of firearm, but apprehension of Ashok Yadav along with motorcycle has not been properly been explained and in likewise manner, recovery of motorcycle of the victim from the possession of Shambhu Ravidas gives additional support to the prosecution case. So, submitted that the finding recorded by the learned lower Court did not require interference.

10. From the record, it is evident that PW-1 is the informant, PW-2 and PW-3 is his full brother, who on being informed by the PW-1 have arrived at the P.O. PW-4, PW-5, PW-6 and PW-8 are the resident of Laherian Tand and as they have not supported the case of the prosecution on account



thereof, they were declared hostile and even after going through their respective deposition, it is apparent that prosecution could not be able to gather any substance. PW-7 is the I.O.

11. PW-3 is Dilip Kumar, who also happens to be Teacher. He, during his examination-in-chief, has stated that on 14.09.2012 at about 3.00 P.M. while he was at his school, his brother Manoj Kumar Mandal had informed over mobile with regard to his kidnapping. He had also disclosed that he got the motorcycle fallen down at Lahernian Tand, whereupon he was there. He reached there and had seen the villagers having caught hold one of the miscreants. One Pulsar motorcycle black in colour was there. The person, who was apprehended, was Ashok Yadav. His brother was there. His brother had not disclosed anything. Police came, took away Ashok Yadav and motorcycle. Production-cum-seizure list was prepared relating to motorcycle over which he put his signature. Identified his signature. Identified accused Shiv Nandan Yadav @ Nandan Yadav @ Shivanand Yadav. During cross-examination, he has stated that he remains at his school from 9.00 A.M. to 4.00 P.M. He has further stated that whenever he has to leave the school during the official hour, he has to take permission from the Principal, but on the alleged date, he had not taken the same. In Para-3, he



has further stated that when he reached at the P.O., he found wound over his brother, eye was swollen. At that very moment, 100-150 persons were present, but he is unable to disclose their names. In Para-4, he has stated that police had taken away the motorcycle. In Para-5, he has stated that he has gone to police station where seizure list was prepared. In Para-6, he has admitted that he had not disclosed the police that his brother had disclosed that he was kidnapped and during course thereof, he got the motorcycle imbalanced at Laherian Tand as a result of which, they fallen down. In Para-7, he has stated that the house of Shiv Nandan Yadav @ Nandan Yadav @ Shivanand Yadav lies four kilometer away. He was known since before.

12. PW-2, another brother of PW-1 as well as PW-3, had stated that on 14.09.2012 while he was at his own shop at Gidhaur, his elder brother Dilip Kumar (PW-3) came at 3.05 P.M. and disclosed that Manoj has been kidnapped, whereupon they have to go to village-Lahernian. They both came at Lahernian Tand 3.20-3.25 P.M. where met with his brother Manoj Mandal, one of the accused was apprehended namely Ashok Yadav. One Pulsar motorcycle was there, one black helmet was there. One strip of cloth was there by which eye was tied. His brother Manoj disclosed that Nandan and Ashok Yadav



have kidnapped him. Police was informed. Police came and took away the accused, his brother to police station. Case was instituted at the P.S., identified. During cross-examination at Para-2, he has stated that when they reached at the P.O., there was assemblage of 100-200, but he is unable to disclose name of any of them. In Para-4, he has stated that he met with his brother Manoj at a place, which was 6-7 Kilometer away from his shop. When he received information, at that very time, he was alone at his shop. In Para-6, he has stated that he is not an eye witness to occurrence. In Para-7, he has shown ignorance with regard to presence of Shiv Nandan Yadav @ Nandan Yadav @ Shivanand Yadav before a Court. Then has denied the suggestion that out of local politics, Shiv Nandan Yadav @ Nandan Yadav @ Shivanand Yadav has been falsely implicated.

13. PW-1 is the alleged victim. He has deposed that the occurrence is of dated 14.09.2012 at 2.50 P.M. On the same day at about 2.30 P.M. while he was proceeding over his own motorcycle from Primary School, Chaukidore and as soon as reached near Chhena Mor, three motorcycle borne criminals came from behind, dashed as a result of which, he fell down. Thereafter, Ashok assaulted. After taking out of cloth strip from his pocket, his eyes were tied. Shiv Nandan Yadav @ Nandan



Yadav @ Shivanand Yadav had handed over helmet to Ashok Yadav asking him to put over his head. Then, they got him seated in the middle over motorcycle and took him to Lahernian Tand. His hands were opened. He pushed Navin Yadav as a result of which, he fell down, motorcycle also fell down. He after removing helmet as well as cloth strip began to raise alarm attracting the villagers, Nandan and Ashok began to flee after showing pistol, but villagers have apprehended Ashok Yadav while Shiv Nandan Yadav @ Nandan Yadav @ Shivanand Yadav succeeded in his escape. He has further stated that one miscreant took away his motorcycle from the place where he had fallen down. So many documents relating to school were kept in the dickey of the motorcycle including cheque book and passbook, Macro Max mobile phone etc. He informed his brother Dilip Kumar. Both brothers came, police was informed. He had handed over written information (Exhibited), identified the accused. In Para-2 of his cross-examination, he has stated that the motorcycle by which, his motorcycle was dashed, was without any registration number, but it was Bajaj Pulsar. In Para-3, he has stated that later on, he came to know that aforesaid vehicle belongs to Kameshwar Mandal. He has further stated that his school was running from 8.00 A.M. to 2.30 P.M.



In Para-8, he has stated that he had not got treated his injuries. He has further stated that after falling down from the motorcycle, he had opened the cloth strip. His hands were not tied. Ashok Yadav was apprehended at the spot while Shiv Nandan Yadav @ Nandan Yadav @ Shivanand Yadav fled away. He had shown the cloth strip to the villagers. He had handed over to the same to police and for that, seizure list was prepared over which, he had put his signature. In Para-9, he has stated that aforesaid strip was seized in his presence over which, his signature was obtained. In Para-10, he has stated that helmet was also produced by him for which, seizure list was prepared. In Para-11, he has stated that first of all, his eyes were tied, then helmet was put over his head. He had identified Ashok Yadav, Shiv Nandan Yadav @ Nandan Yadav @ Shivanand Yadav, Shambhu Ravidas through voice. They were travelling over one motorcycle. In Para-16, he has stated that he has disclosed the event to his brothers. In Para-17, he has stated that house of Ashok Yadav, Mukesh Yadav lies three kilometer away from his village. He has further admitted that at an earlier occasion, land of Mukesh was at his village, which was sold away by him. He denied the suggestion that he was also one of the intending candidate. In Para-13, he has stated that Ashok Yadav was lying



by his side after falling from motorcycle. When he opened his eyes after removing cloth strip, had seen Nandan at a distance of 50 yards and was running. In Para-14, he has stated that 20-25 persons have chased Nandan, but he managed to escape. He has further admitted at Para-18 that he is contesting the land dispute with Radha Devi. He denied the suggestion that in the aforesaid background, this false case has been instituted against Shiv Nandan Yadav @ Nandan Yadav @ Shivanand Yadav, who is supporting Radha Devi.

14. PW-7 is the I.O. He has deposed that on 14.09.2012, he was S.I. of Jhajha Police Station. He has further stated that after receiving information that during course of kidnapping of one person by the miscreants, the villagers of Lahernian Tand have apprehended one culprit, he along with other police officials proceeded and after reaching at P.O., informant Manoj Kumar Mandal had handed over his written report to the Officer-in-Charge. One Pulsar motorcycle having without registration number along with apprehended accused was handed over by the villagers for which, production-cum-seizure list was prepared by the Officer-in-Charge and then thereafter, he was entrusted with the investigation. He recorded further statement of the informant, inspected the P.O. (detailed



the first P.O. Ghena Mor as well as the second P.O. at Laherian Tand). He has also examined the seizure list witnesses, other witnesses. O/c has handed over the inculpatory extra-judicial confessional statement of Ashok Yadav. Also shown and exhibited the formal F.I.R. (photo copy), chargesheet. At an earlier occasion, he had handed over chargesheet against Mukesh Yadav and Ashok Yadav, keeping the investigation pending against Shiv Nandan Yadav and Shambhu Ravidas. Thereafter, chargesheet was submitted against Nandan Yadav as well as Shambhu Ravidas. During cross-examination, he has admitted at Para-3, he had not recorded S.D. Entry before leaving from the police station. He has further stated at Para-4 that he had not inquired whether Nandan Yadav was present in Court at the relevant time. In Para-5, there happens to be suggestion with regard to presence of Nandan Yadav before the Court of Sri. Sharda Nand, Judicial Magistrate, 1st Class, Jamui relating to G.R. Case No.796 of 2004. In Para-6, he has stated that villagers have produced the motorcycle as well as the accused. Statement of informant was recorded by him, but he had not taken signature of the informant over the same. He had not put signature over the aforesaid statement. Aforesaid statement is not available with the case diary. He is unable to



say where that statement is. In Para-7, he has stated that he has got no signature over production-cum-seizure list. That motorcycle was not produced by the resident of Lahernian Tand. In Para-9, he has stated that he had not found injury over the person of informant, so no injury report was prepared. In Para-10, he has stated that he has not mentioned time of inspection of the P.O. He has not found any sign of falling of the motorcycle at the P.O. In Para-12, he has admitted that he had not investigated with regard to seized motorcycle. In Para-13, he has stated that he has not seized nor any cloth strip as well as helmet was produced before him. Then has denied the suggestion that he has done collusive investigation.

15. DW-1 is a formal witness, who had deposed that on 14.09.2012, he had filed hazari of Shiv Nandan Yadav in connection with G.R. Case No.796 of 2004. He has further stated that Shiv Nandan Yadav had put his signature in his presence. During cross-examination, he has stated that he has not put his signature over the hazri.

16. After going through the evidence available on the record, it is evident that PW-4, 5, 6 and PW-8 have not supported the case of the prosecution. It is also evident that there happens to be inconsistency amongst the evidence of PW-



2 as well as PW-3 as PW-3 has not disclosed that his brother Manoj had divulged anything with regard to the occurrence, accused while PW-2 had stated that his brother Manoj Kumar Mandal had spoken regarding occurrence. They have not seen the occurrence. PW-2 and PW-3 have reached at the P.O. conjointly. They have claimed presence of accused Ashok along with motorcycle. Seizure list is there, but the same lacks presence of Ashoka. Further, I.O. had admitted that he was not produced by the villagers of Lahernian Tand, makes the situation worsen, in the background of the fact that informant has deposed that after falling Ashok Yadav and Nandan Yadav ran therefrom having worsen in their hand. Ashok was apprehended. However, prosecution kept mum on that very score. Furthermore, from the evidence of informant, it is evident that when he removed the strip having over his eyes, Nandan Yadav was 50 yards away. Further, there happens to be admission at their end that all the accused including Nandan happen to be known since before, then claiming identification by voice is another circumstances. Informant had stated that under Para-9 that cloth strip as well as helmet were handed over to the police and for that, seizure list was prepared while PW-7, I.O. had disowned all these things. It is further evident from the



evidence of the I.O. that during course of investigation, he had not investigated over the seized motorcycle. That means to say, save and except the evidence of PW-1, none of the PWs are over the occurrence. Now, coming to the evidence of PW-1, apart from other infirmities, which has already been referred above, it is evident that at an initial stage, he alleged that during course of kidnapping, ransom was demanded which during course of evidence given up. Then in that circumstance, one has to see whether ingredients of Section 364 IPC is coming out from his evidence, which should be (A) kidnapping, (B) for the purpose of murder (C) be so disposed of as to put in danger at his death. From the evidence, aforesaid ingredients are not at all found substantiated. There happens to be paucity of evidence on that very score, whereupon the judgment impugned is set aside. Appeal is allowed. Appellant is under custody hence, he is directed to be released forthwith if not wanted in any other case.

(Aditya Kumar Trivedi, J)

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