

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.386 of 2019

Arising Out of PS. Case No.-31 Year-2001 Thana- CHACKMEHSI District- Samastipur

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Ram Bali Sahni Son Of Sarover Sahni Resident Of Village - Baghla, P.S.-
Chakmehsi, District - Samastipur.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Vivekanand Singh, Advocate Mr. Sandeep Jha, Advocate
For the State	:	Mr. Ajay Mishra, APP

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 02-08-2023

1. We have heard Shri Vivekanand Singh, the learned Advocate for the appellant and Mr. Ajay Mishra, the learned APP for the State.

2. The appellant has been convicted under Section 364 (A) and 323 of the I.P.C. vide Judgment dated 28.02.2019 passed by the learned Additional Sessions Judge 6th Samastipur in Sessions Trial No. 744 of 2007 and by order dated 07.03.2019, he has been sentenced to undergo R.I. for life, to pay a fine of Rs. 10,000/- and in default of payment of



fine to further suffer imprisonment for six months for the offence under Section 364 (A) of the I.P.C. and simple imprisonment for one year for the offence under Section 323 of the I.P.C. He has also been convicted under Section 27 of the Arms Act for which he has been sentenced to undergo R.I. for 3 years. The sentences have been ordered to run concurrently.

3. One Tajendra Verma, a 15 year old boy was kidnapped in the night intervening between 4th and 5th of May 2001 from his house. He is said to have come back to his home on his own after five days. His father/Narendra Verma is the informant of this case who has alleged that in the night intervening between 4th and 5th of May 2001, his neighbour Suresh Verma knocked and told that his mother is calling the informant. Though the informant was reluctant to open the door on the asking of the neighbour/Suresh Verma, but the mother of the victim, who was sleeping in the house, opened the door. It has been alleged in the F.I.R. that about 15 to 20 miscreants entered the house and caught hold of the informant and his brother. The son of the informant, who is the victim of



this case, hid himself behind the firewood stacked on the roof of his uncle but two of the miscreants could locate him in the torchlight. No sooner was the son of the informant taken into custody by the miscreants, the informant and his brother were let free. The victim, thereafter, was taken to some distance but the informant did not know where exactly was his son taken.

4. On the basis of the aforementioned *fardbeyan* statement of Narendra Verma, who has been examined as PW-8 during the Trial, Chakmehsi P.S. Case No. 31 of 2001 dated 05.05.2001 was registered for investigation for offences under Sections 364 (A), 323 and 34 of the I.P.C.

5. It appears from the records that the victim came back on his own on 10.05.2001 when he was subjected to medical examination and also made to give his statement before the police. He is said to have taken the police party to the houses where he was kept in captivity. It further appears from the records that the house owners in whose houses the victim was kept for some time, disclosed the name of the appellant as the person behind the kidnapping, which led to his arrest.



6. Surprisingly, no test identification parade was held but the victim Tajendra Verma (PW-6), his mother Chandrakala Devi (PW-4) and his sister Renu Devi (PW-5) have disclosed during their deposition before the trial that they identified the appellant in the torchlight, walking away with the victim along with others.

7. Mr. Vivekanand Singh, the learned Advocate for the appellant on this score asserts that the prosecution has utterly failed to prove the case beyond all reasonable doubts. He adumbrates the point by demonstrating that the victim in his deposition before the Trial Court has not stated as to how he learnt the name of the appellant and identified him as the person who brought food to him and also kept a vigil while he was in captivity. On this basis, Mr. Singh has raised the argument that perhaps the appellant was arrested on suspicion or on some information gathered by the police, the details of which are not known to us and thereafter, as instructed, the victim (PW-6) has identified him for the first time before the Trial Court as a person who kept vigil on him during his captivity and also offered food to him. In the same breath, Mr.



Singh has argued that the identification of the appellant by his mother Chandrakala Devi and sister Renu Devi cannot be accepted as correct statements. For their statements to be believed, the appellant after his arrest was required to be put on test identification parade. All the witnesses referred to above have identified him for the first time in Court. This is no identification in the eyes of law. Apart from this, it has been urged that the I.O. in this case has not been examined and, therefore, none of the witnesses could be confronted with the statements which they had made earlier before the police. This has caused serious prejudice to the case of the appellant and, therefore, he requires to be acquitted of the charges.

8. As opposed to the aforementioned contention, Mr. Ajay Mishra, the learned Advocate for the State has submitted that there was no reason for the informant or for that matter the victim to have falsely implicated the appellant. No doubt, the I.O. has not been examined in this case and there is no evidence on record to trace the link to the appellant for him to be arrested in this case but that by itself would not discredit the prosecution version especially, when during trial, three of



the witnesses including the victim have identified the appellant as one of the miscreants and the person who kept vigil while the victim was being taken from one place to other in the captivity of the criminals. He further submits that the offence is complete so far as the ingredients of Section 364 (A) is concerned. The victim was kidnapped. The purpose was to obtain ransom and the ransom letter also was received, though, only after the victim had reached his house. The explanation which the State has to offer about this aspect is that victim was confined in a place where the police party had arrived and the victim had to be taken to another place where he was handed over to a separate group of criminals. Thus, the explanation offered by Mr. Mishra is that the letter demanding ransom was dispatched to the informant (PW-8) while the victim was still in the captivity of the first set of criminals but later, the victim was handed over to the others. Thus, the purpose of taking away the victim was only to demand and obtain ransom. There was no enmity or else the informant and his brother would have been harmed. The marauders did not even ransack the house. No sooner had they located the young



member of the house, he was taken into captivity and taken to unknown destination. What could have been the purpose of doing so except for demanding ransom from the family. The informant, Mr. Mishra further asserts, though has raised suspicion on two of his neighbours with whom he had a continuing dispute but the afore-noted two persons were never investigated. The suspicion of the informant was never accepted by the investigator. Thus, the appellant was the person who was part of the group which had originally come to the house of the informant and had taken away the victim.

9. We have carefully perused the documents on record especially the deposition of the victim (PW-6) who at the time of the occurrence was about 15 years of age. He has supported the prosecution version in his Examination-in-Chief by narrating what his father had to narrate in the first information report but he has not stated anything as to how he could learn the name of the appellant who had offered food to him for one or two days till he was in captivity of one group of criminals. Without learning the name of the person keeping vigil on him, the only way in which the appellant could have



been arrested would be some information through other source which has not been brought forth by the prosecution. Obviously, therefore, the police acted on some tip-off and may be some information provided by the spy. Because of the faulty cross-examination of the prosecution witnesses, we in our anxiety to know as to how the name of the appellant came into picture, have gone through the investigation reports. It appears that nowhere the name of the appellant had transpired in the statements of the victim or his father or the mother and sister of the victim. What was gathered by the police after the registration of the F.I.R. was only through the mouth of spy and perhaps the statements made by the house owners in whose houses the victim was kept for about 3-4 days. None of those house owners have been examined at the trial. As noted above, the I.O. of this case has also not been examined nor any explanation has been offered. Thus, even if the deposition of PW-6 is believed that he was taken away from his house on gunpoint, assaulted on way, kept in confinement in two or three houses and that he could come out of their clutches on one day when one of the persons sleeping with him did not



wake up timely in the morning, the source regarding the role played by the appellant, therefore, remains in obscurity. Had the appellant been arrested on suspicion and put on test identification parade and then identified by the victim or others, the situation would have been different. In this background, we would be loath in giving any weightage to the deposition of the mother and sister of the victim that they had identified the appellant as one of the participants of the crime. They claimed to have identified him while taking away the victim from their house.

10. Thus on a conspectus of all these facts, it appears that there was some attempt at kidnapping the victim, he being a younger person of the family, perhaps the main scion, who could have been the best bait for demand and payment of ransom money. This explains why neither the informant nor his brother who were also taken in captivity for some time were harmed in any manner. The miscreants who were in large numbers did not hurt any other member of the family nor did they take away any valuables from the house. Thus, the act of kidnapping has been proved from the narration



of events given in the F.I.R. and the victim having been taken away. Who did it, but, remains unknown. Two to three groups of criminals appear to have taken part. If the statement of the victim is to be believed, on one of the days of his captivity, police party had arrived and firing was opened from both sides. Taking the cover of such cross firing, two of the miscreants took away the victim to another place which also remained unknown. Most of the times, the victim claims to have been blindfolded. If this story is believed to be true, then perhaps his identification of the houses where he was put in captivity also gets shrouded in doubt.

11. Be that as it may, believing his statement that during the daytime he was kept in different houses but was taken to some orchard or garden in the night to prevent him from being taken away by the police, he could have sensed the geographical whereabouts where he was kept.

12. If we accept the claim of the victim that he took the police party to the houses where he was kept confined, then there is some explanation for suspecting the hands of the house owners, who may, under the threat of



being killed, allowed their houses to be used as a safe-house where the victim was confined. Similar is the situation with respect to the conduct of Suresh Verma, the neighbour, who actually acted under the threat of the criminals and knocked at the door of the informant for him to open the door for letting in the criminals. The informant, as we have noted above, was a little wary of opening the door of the house in the night but the mother of the victim unsuspectingly and unwittingly opened the door, letting in the criminals who took away the victim.

13. The aforementioned facts have been proved by Gangiya Devi (PW-1) and Suresh Verma (PW-9) who have testified to the fact that under threat of the criminals, they had knocked at the door of the informant. This though proves the factum of kidnapping, but as we have noted earlier who did it remains a mystery.

14. A peculiar approach has been adopted by the prosecution/investigator in arresting the appellant and making three of the witnesses identify him as one of the miscreants.



15. We are not at all convinced that the proposition advanced by the prosecution is correct or is believable.

16. We, therefore, set aside the judgment and order of conviction and acquit the appellant of all charges.

17. The appellant, we are told, is in jail. He is directed to be released from jail forthwith, if not detained or required in any other case.

18. Let a copy of this judgment be dispatched to the Superintendent of the concerned jail for compliance and record.

19. The records of this case shall be returned to the Trial Court forthwith.

20. The appeal stands allowed.

(Ashutosh Kumar, J)

(Vipul M. Pancholi, J)

Sunil/Sachin-

AFR/NAFR	N.A.F.R.
CAV DATE	
Uploading Date	05.08.2023
Transmission Date	

