

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL APPEAL (DB) No.452 of 2020

Arising Out of PS. Case No.-20 Year-1992 Thana- NOKHA District- Rohtas

1. Laxman Chaudhari Son of Late Mukhlal Chaudhari Resident of Village - Basdihan (Rameshwarpur Tola), P.S.- Dinara, District - Rohtas.
2. Paras Chaudhari Son of Late Bhola Chaudhari Resident of Village - Rajadih, P.S.- Sanjhauli, District - Rohtas at Sasaram.
3. Ashok Chaudhari Son of Late Bharat Chaudhari Resident of Village - Lalganj Yadu Tola, P.S.- Nokha, District - Rohtas at Sasaram.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 419 of 2020

Arising Out of PS. Case No.-20 Year-1992 Thana- NOKHA District- Rohtas

Bhuali Rai Son of Late Shipujan Rai Resident of Village- Badaki Akodhi, P.S.- Karaghar, District- Rohtas, Sasaram.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 455 of 2020

Arising Out of PS. Case No.-20 Year-1992 Thana- NOKHA District- Rohtas

Bheem Choudhary Son of Late Yaduvanshi Choudhary Resident of Village - Lalganj Yadu Tola, Police Station - Nokha, District - Rohtas at Sasaram.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 452 of 2020)

For the Appellant/s : Mr.Babu Nandan Prasad

For the State : Mr.Abhimanyu Sharma, APP

(In CRIMINAL APPEAL (DB) No. 419 of 2020)

For the Appellant/s : Mr.Dineshwar Tiwary

For the State : Mr. Abhimanyu Sharma, APP

(In CRIMINAL APPEAL (DB) No. 455 of 2020)

For the Appellant/s : Mr.Raghunandan Kumar Singh

Ms. Riya Singh

For the State : Mr.Abhimanyu Sharma, APP



CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH
and
HONOURABLE MR. JUSTICE NAWNEET KUMAR PANDEY
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE NAWNEET KUMAR PANDEY)
Date : 13-10-2023

The appellants have preferred these appeals under Section 374(2) of the Code of Criminal Procedure against the judgment of conviction dated 28.02.2020 and order of sentence dated 29.02.2020 passed by the Fast Track Court-1, Rohtas at Sasaram in Sessions Trial No. 443/1993, arising out of Nokha P.S. Case No. 20 of 1992, whereby and whereunder the appellants have been convicted and sentenced as under:-

Cr. Appeal (D.B.) No. 452 of 2020				
Appellants	Convicted under sections	Sentence		
1. Laxman Chaudhari		Imprisonment	Fine (Rs.)	in default of fine
2.Paras Chaudhari	364A/149 of the Indian Penal Code	R.I. for Life	25,000/-	S.I. for six months
3. Ashok Chaudhari				
Cr. Appeal (D.B.) No. 419 of 2020				
Bhuali Rai	364A/149 of the Indian Penal Code	R.I. for Life	25,000/-	S.I. for six months

Cr. Appeal (D.B.) No. 455 of 2020				
	Convicted under sections	Sentence		
Bheem Chaudhary		Imprisonment	Fine (Rs.)	in default of fine
	364A/149 of the Indian Penal Code	R.I. for Life	25,000/-	S.I. for six months



2. The concerned Nokha P.S. Case No. 20 of 1992 was registered on the basis of *fardbeyan* of Suresh Choudhary (PW 1) on 25.02.1992 at about 11:00 P.M., before the then ASI, Nokha P.S. T.P. Singh. As per *fardbeyan*, PW 1, who happened to be son-in-law of Ramdeo Choudhary PW 7, used to reside in his in-laws' house (*sasural*) and worked with his in-laws. On 25.02.1992 at about 10:30 P.M., he was sleeping in a hut, situated near the brick-kiln of his father-in-law with his brothers-in-law, Mahendra Choudhary (PW-6) and Ram Raj Chaudhary (PW 5), (victim/the kidnapped boy), Ishwar Dayal (PW 3) and two persons, namely, Satyanarayan Chaudhary and Kapil Chaudhary. All of a sudden, the miscreants entered into the hut and started removing blankets from the persons sleeping in that hut. When Mahendra Chaudhary (PW 6) asked as to who were they, one of the miscreants started dragging him holding his leg, whereupon another miscreant uttered that he was not their target, whereupon he left PW 6 and dragged out Ram Raj Chaudhary, who was aged about 11 years. The miscreants fired at Mahendra Chaudhary, resulting into damage of his left eye. The miscreants while opening fire in the air, took away Ram Raj Chaudhary with them towards western direction of the village. Having heard the sound of firing, the villagers assembled there,



with whom the informant came to the police station and lodged his *fardbeyan*. The miscreants were talking in *bhojpuri* dialect and they were four in numbers. The informant has stated in his *fardbeyan* that he identified the miscreants in the torchlight, which the miscreants were carrying. He claimed to identify them had they were produced before him. The informant has mentioned further that the victim boy was kidnapped by the miscreants for ransom. After investigation, the charge-sheet was submitted on 03.05.1992 against nine accused persons under Sections 365, 368, 387 and 307/34 of the IPC and 27 of the Arms Act. The second charge-sheet was submitted on 07.07.1992 against three accused persons, exonerating two accused persons, namely, Most. Etrajo Kuwar and the appellant Bheem Chaudhary, whose names figured during course of investigation. The learned Magistrate took cognizance against all the accused persons on 03.04.2002 and vide same order, he discharged the appellant Bheem Choudhary and co-accused Most. Etrajo Kuwar. But the appellant Bheem Choudhary was again summoned under Section 319 of the CrPC to face the trial.

3. Amongst 13 accused persons, against whom the cognizance was taken by the learned Chief Judicial Magistrate, three accused persons, namely, Musafir Kahar, Kishore



Chaudhary and Shiv Bachan Chaudhary died before framing of the charges. Charges were framed against 10 remaining accused persons on 03.04.2002 under Section 364(A)/149 of the IPC. The charges against the appellant Bheem Choudhary, who was summoned under Section 319 of the CrPC were framed on 19.03.2010 for the offence punishable under Sections 364A/149 and 307/149 of the IPC. All the accused persons pleaded of their complete innocence and claimed to be tried.

4. It is pertinent to mention here that three accused persons, namely, Teja Rai, Gopal Rai and Kameshwar Tiwary died during the course of the trial. Consequently, the proceedings against them were dropped. As such, eight accused persons were put on trial, amongst whom these five appellants were convicted and sentenced, as noted above, and three accused persons, namely, Dharmdeo Mahto, Chandeshwar Rai and Sheodhari Kahar were acquitted, as the learned trial court did not find any cogent evidence against them.

5. In order to prove its case, the prosecution examined altogether seven witnesses, amongst whom PW 1, Suresh Chaudhary is the informant. PW 5, Ram Raj Chaudhary is the victim. PW 6, Mahendra Chaudhary is brother of the victim and also an injured witness. PW 3, Ishwardayal



Chaudhary is an eye-witness and also claims himself to be injured. PW 2, Kamta Chaudhary, who reached at the place of occurrence having heard the sound of firing, PW 4, Hardeo Chaudhary, is brother of PW 5 and he went to the place of occurrence after hearing the sound of firing and PW 7 is Ramdeo Chaudhary, father of the Victim.

6. The prosecution exhibited the following documentary evidences:-

Sl. No.	Description	Exhibit No.
1.	Signature of Ram Raj Chaudhary on the <i>fardbeyan</i> recorded under Section 164 of the CrPC.	Exhibit-1
2.	LTI of P.W.1 Suresh Chaudhary on the <i>fardbeyan</i> .	Exhibit-2

7. The appellants were questioned by the trial court under Section 313 of the CrPC for the purpose of enabling them to explain the incriminating circumstances appearing in the prosecution's evidence against them. The appellants answered all those questions in negative.

8. As per the deposition of Suresh Chaudhary, PW 1 (the informant), in the night of occurrence at about 11.30, when he was sleeping in the hut along with Mahendra Chaudhary, Ram Raj Chaudhary, Ishwar Chaudhary and two



other persons, 6-7 miscreants came there flashing torchlight. They started snatching the blankets with which the persons present in the hut had covered themselves. One of the miscreants fired at Mahendra Chaudhary (PW 6), due to which one of his eyes was completely lost. Ishwardayal Chaudhary (PW 3) also suffered firearm injuries in his arm. The miscreant forcibly took away Ram Raj Chaudhary (PW 5) with them. This witness could not identify the miscreants.

9. Ram Raj Chaudhary, the victim (kidnapped boy) has been examined as PW 5. His statement was also recorded under Section 164 of the CrPC after 12 days of the occurrence, when he was rescued from the place where the miscreants had hid him. This witness deposed that he was sleeping in the night of occurrence in the hut situated in *khalihan*. His brother Mahendra Chaudhary (PW 6), brother-in-law, Suresh Chaudhary (PW 1) and Ishwardayal Chaudhary (PW 3), Kapil Chaudhary and Satyanarayan Chaudhary (not examined), were also sleeping with him. All of sudden, 6-7 miscreants came there flashing torchlight and they started snatching the blanket etc. After assaulting this witness, they dragged him out of the hut. They fired at Mahendra Chaudhary. Thereafter, they fled away taking this witness with them. The miscreants brought this



witness to Akauda village and they concealed him in a house for 6-7 days, in a room situated at the first floor of that house. After 2-3 days, the appellants, Paras, Laxman and Ashok (Cr. APP (DB) No. 452 of 2020) and co-accused Shiv Bachan and Kameshwar commanded this witness to send a letter to his father, demanding Rs.80,000/- The accused persons variously tortured this witness and they would utter that he (PW 5) would not be released unless their demand be fulfilled. He has also deposed that the appellant Paras was continuously keeping a close vigil on this witness having a pistol. Co-accused Teja, Bhuali (appellant of Cr. App.(DB) No. 419 of 2020) and Gopal were providing meals to him. One day, all of a sudden, the police came and rescued this witness and also arrested the appellant Paras Chaudhary from that place. He deposed further that the similar statement he had given before the Magistrate under Section 164 of the CrPC. He identified his signature on that statement which was marked as Exhibit-1. The witness identified the appellant Ashok Chaudhary who was present in the dock at the time of deposition of this witness and also claimed to identify the other accused persons, had they were present in the dock.

10. PW 6 is Mahendra Chaudhary, the brother of



the kidnapped boy. He was also sleeping in the same hut in the night of occurrence. 7-8 miscreants came there, flashing torchlight and they kidnapped away Ram Raj Chaudhary. This witness identified Bheem Chaudhary, Ashok Chaudhary (appellants) and Visheshwar Chaudhary (co-accused). When this witness asked the miscreants as to why were they kidnapping his brother, at the order of Bheem Chaudhary, Ashok Chaudhary fired in his eyes, resulting into complete damage of his eye. Having suffered the firearm injuries, this witness fell down and became unconscious. This witness identified Bheem Chaudhary and Ashok Chaudhary present in the dock and also claimed to identify co-accused Visheshwar Chaudhary, had he been present there.

11. PW 3, Ishwardayal Chaudhary is also an eye-witness. He also suffered gunshot injury. This witness has deposed that in the night of occurrence, he was sleeping in the same hut, along with Mahendra Chaudhary, Ram Raj Chaudhary, Suresh Chaudhary, Satyanarayan Chaudhary and Kapil Chaudhary. All of sudden, the miscreants entered into the hut and kidnapped away Ram Raj Chaudhary. When Mahendra Chaudhary interrupted, the miscreants fired at him, resulting into complete loss of his eye. This witness has also suffered



pellet injuries in his arms and fingers. This witness denied to identify any of the accused present in the dock.

12. PW 2, Kamta Chaudhary is a co-villager. On hearing outcry, he went to the brick-kiln where he saw that villagers had assembled. He also saw Mahendra Chaudhary and Inshwardayal Chaudhary in injured condition. They had suffered firearm injuries. The miscreants had taken away with them Ram Raj Chaudhary, who was recovered after ten days of the occurrence.

13. PW 4 Hardev Chaudhary is the brother of the victim Mahendra Chaudhary and Ram Raj Chaudhary. At the time of occurrence, he was sleeping in his house. On hearing outcry, he went to the place of occurrence. He saw Mahendra Chaudhary and Ishwardayal Chaudhary in injured condition. They had suffered firearm injuries. The miscreants had kidnapped his brother who was recovered after 9-10 days of the occurrence.

14. PW 7, Ramdeo Chaudhary is father of the victim. He deposed that the miscreants had kidnapped his younger son Ram Raj Chaudhary and they made injured his middle son (*majhala beta*) Mahendra Chaudhary by fire shot. This witness did not identify any of the miscreants.



15. Learned counsel for the appellants have submitted that the eye-witnesses Ishwardayal Chaudhary (PW 3), and Ramdeo Chaudhary (PW 7), did not identify any of the miscreants, as such, even if the occurrence is assumed to be true, it cannot be connected with the appellants. It has also been submitted on behalf of the appellants that the Doctor, who examined PW 3 and PW 4, was not examined, neither the injury report was exhibited, which falsifies the entire prosecution case and creates doubt on the veracity of the prosecution story. The Investigating Officer has also not been examined. As such, the place of occurrence could not be established.

16. Per contra, Mr. Abhimanyu Sharma, the learned Additional Public Prosecutor, has submitted that the FIR itself proves the veracity of the prosecution's case, which has been registered against unknown persons. He has also submitted that there is nothing on the record to show that the occurrence had taken place due to enmity which might be the motive for false implication of the accused persons. His further submission is that the victim boy remained in captivity of the accused persons for 8-9 days, so his recognition of the accused persons is quite natural. There is no reason to discredit the testimony of this



witness, as nothing could be elicited from cross-examination of this witness to make him untrustworthy.

17. We have perused the impugned judgment of the trial court and the lower court's records. We have given our thoughtful consideration to the rival submissions advanced on behalf of the parties.

18. PW 5, Ram Raj Chaudhary, the kidnapped boy, who was aged about 11 years at the time of occurrence, was recovered from the hideout, where he was concealed by the miscreants. At the same time, Paras Chaudhary, the appellant, was also arrested from that hideout. The appellants Paras, Laxman and Ashok (appellants of Cr. App (DB) No. 452 of 2020) and co-accused Shiv Bachan and Kameshwar were putting pressure on him to send a letter to his father demanding Rs.80,000/- as ransom. The appellant, Bhuali and co-accused Teja and Gopal were providing meals to him. The appellant Paras Chaudhary was continuously keeping vigil on him with a pistol who was arrested from the hideout, at the time of recovery of the victim, Ram Raj Chaudhary. The veracity of this witness is not shaken, as he identified the appellant Ashok Chaudhary, present in the dock, at the time of deposition and also claimed to identify the other co-accused persons had they been present in



the dock. The victim is the best witness of the occurrence, who furnished the vivid description of the entire occurrence. He appears to be trustworthy and a witness of sterling quality and his veracity was not shaken in his cross-examination.

19. The place of occurrence is a hut situated near brick-kiln of the members of the prosecution side where the witnesses, as noted above, were sleeping. The witnesses examined on behalf of the prosecution are constant in establishing the place of occurrence, as such, non-examination of the Investigating Officer does not go to the root of the matter and merely because the Investigating Officer has not been examined, it cannot be said that the defense was prejudiced.

20. PW 5, the kidnapped boy named the appellants in his deposition with their specific overt act, except appellant Bheem Chaudhary. He did not name Bheem Chaudhary either in his deposition recorded during the course of trial or in his statement recorded under Section 164 of the CrPC.

21. As such, in our view, it is not vouchsafed to convict the appellant Bheem Chaudhary and he deserves the benefit of doubt. On the basis of above-noted observations, the appellant Bheem Chaudhary of Cr. Appeal (DB) No. 455 of 2020 is given the benefit of doubt. Accordingly, he is acquitted



from all the charges levelled against him and the judgment of conviction dated 28.02.2020 and order of sentence dated 29.02.2020 passed by the Fast Track Court-1, Rohtas at Sasaram in Sessions Trial No. 443/1993, arising out of Nokha P.S. Case No. 20 of 1992 against this appellant stands set aside. Since the appellant Bheem Chaudhary is on bail, he is discharged from the liability of bail bond.

22. Consequently, Cr. Appeal (DB) No. 455 of 2020 stands allowed.

23. So far as the appellants Laxman Chaudhari, Paras Chaudhari, Ashok Chaudhari and Bhuali Rai are concerned, the victim boy (PW 5), as discussed above, in his deposition, has stated about specific overt act against them. Their guilt has been proved beyond all reasonable doubts.

24. It is pertinent to mention here that the occurrence had taken place on 25.02.1992 and the FIR was registered the same day under Sections 365, 368, 387 and 307/34 of the IPC and 27 of the Arms Act. The charges were framed on 03.04.2002 under Sections 364A/149 of the IPC against the appellants and other accused persons. The appellants have been convicted under the above-mentioned Sections of the IPC and they were awarded rigorous imprisonment for life with a fine of Rs,



25,000/- each and, in default of payment of fine, they have been ordered to undergo simple imprisonment for further six months.

25. It is noted that Section 364A of the IPC was inserted by way of amendment in the year 1993 by amending Act 42 of 1993 with effect from 22.05.1993, which is subsequent to the date of occurrence, meaning thereby Section 364A was not in the statute book on the date of occurrence. Article 20(1) of the Constitution of India guarantees the protection of a felony of crime, from *ex post facto* laws. As such, the appellants could not be convicted under the law, which was not in existence on the date of occurrence.

26. Considering the above-mentioned facts and circumstances, the conviction in respect of aforesaid four appellants, namely, Laxman Chaudhari, Paras Chaudhari, Ashok Chaudhari of Cr. Appeal (DB) No.452 of 2020 and Bhuali Rai of Cr. Appeal (DB) No.419 of 2020 is altered into Section 363/149 of the IPC from Section 364A/149 of the IPC and the sentence of rigorous imprisonment for life awarded to them is altered into a sentence of rigorous imprisonment for seven years. The quantum of fine awarded by the learned trial court shall remain the same.

27. The appellant Bhuali Rai of Cr. Appeal (DB) No.



419 of 2020 and the appellant Paras Chaudhari of Cr.Appeal (DB) No.452 of 2020 are on bail, as such, their bail bonds are cancelled and they are directed to be taken into custody forthwith to serve the remaining sentence.

28. On the basis of above-noted observations, Cr. Appeal (DB) No. 452 of 2020 and Cr. Appeal (DB) No. 419 of 2020 are dismissed with the modification noted above.

(Nawneet Kumar Pandey, J)

**I agree
(Chakradhari Sharan Singh, J)**

(Chakradhari Sharan Singh, J)

HR/Sonali

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