

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.496 of 2016

Arising Out of PS. Case No.-28 Year-2010 Thana- SITAMARHI District- Sitamarhi

Sanjay Thakur, Son of Late Ramchandra Thakur, Resident of village - Bari
Sinhwahini, Police Station Sonvarsa, District - Sitamarhi

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Uma Shankar Prasad, Sr. Advocate Mr. Kamla Kant Tiwary, Advocate
For the Respondent/s	:	Ms. S.B.Verma, APP

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 08-05-2023

Heard Mr. Uma Shankar Prasad, learned senior Advocate assisted by Mr. Kamla Kant Tiwary, learned Advocate for the sole appellant and Ms. Shashi Bala Verma, for the State.

2. The appellant has been charged with kidnapping Uma Kant Kumar, the victim who has been examined as PW 4 in this case. PW 4 remained in confinement for about ten days and was recovered by Nepali Police and handed over to the father of PW 4



namely Daya Nand Mahto (PW 3) before the Court.

3. The appellant was charge-sheeted along with another person who never faced trial. The charge-sheet also named other persons who were shown as absconders and who have not yet surrendered to the process of law leaving the appellant only to be tried.

4. It may be relevant here to be noted that the appellant also did not surrender himself to the process of law even though he was named in the FIR. He surrendered much later after the submission of charge-sheet and he having been declared an absconder.

5. Be that as it may, the Trial Court, after examining eight witnesses on behalf of the prosecution and none on behalf of the defense, convicted the appellant under Section 364 (A) of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for life, to pay a fine of Rs. 20,000/- and in default of payment of fine, to further suffer rigorous imprisonment for six months.



6. The FIR was lodged by the father of the victim namely Daya Nand Mahto on 17.01.2010 alleging that the appellant had come to his house on 14.01.2010 and had conversed with his son (victim) and had gone out of the house. He came back again on 15.01.2010 and took away his son on some pretext or the other whereafter the son of the Informant was not to be traced. Two days later, after having waited for his son to arrive, the subject FIR was registered under Section 365 of the Indian Penal Code.

7. In the aforementioned FIR, the factum of the appellant having come to the house of the informant and having talked to the victim on 14.01.2010 has been specifically stated. That the appellant came on 15.01.2010 to take away the son of the Informant has also been specifically mentioned in the aforesaid FIR. The Informant has further stated that he called the appellant on his mobile telephone number but, the same was always found to be switched off. Thus, a request



was made to the police authorities to recover his missing son.

8. On the basis of the aforementioned written report, Sitamarhi P.S. Case No. 28 of 2010 dated 17.01.2010 was registered for investigation for offence under Section 365 of the IPC.

9. The police, during the course of investigation could not get any clue and the appellant could not be arrested.

10. The appellant all this while was found missing from his house.

11. After about ten days i.e. on 25.01.2010, the victim was recovered from a village in Nepal at the instance of Nepali Police and four other persons were also arrested who were heavily armed and were keeping a vigil on the victim. None of those persons have been extradited for facing trial in India. The victim as noted above was brought to India by the Nepali Police and handed over to PW-3.



12. The mother of the victim namely Ram Kumari Devi (PW 1) has deposed before the trial court that the appellant had visited her house on 14.01.2010 and thereafter, on 15.01.2010 along with another when he took away her son. She learnt from her husband (PW 3) that there was a ransom call for Rs. 50 lakhs and a threatening that if such amount is not paid up, the victim would be killed. She however has narrated before the trial court that the victim was taken away while he was playing in the campus, which statement is substantially different from the First Information Report where her husband had stated that the victim was taken away by the appellant from his house.

13. Similar statement has been made by the elder brother of the victim namely Mahakant Kumar (PW 2). He had also testified to the fact of the visit of the appellant to his house on two days and on the second day of his visit, he had taken away the victim.

14. The father of the victim/informant has been



examined as PW 3, who has supported the prosecution version and has explained that for two days when his son was not to be found, he made frantic search for him along with others and only thereafter, the case registered at Mehsoul O.P. for the offence under Section 365 of the IPC.

15. A day after getting the FIR recorded, the appellant had called him on telephone and had demanded Rs. 50 lakhs for release of his son or else the son would be killed. Immediately, this fact was communicated to the concerned police and the police officer contacted the Superintendent of Police. However, in the meantime, he learnt that his son has been recovered at the instance of Nepali Police and he was asked to take custody of his son. Since then, his son has been residing with him. He, in his cross examination has confirmed the fact that according to the information given to him by the police, the victim was recovered in Nepal on 25.01.2010 in evening hours.



16. The victim was brought to Sitamarhi first at Mehsoul O.P. from where he was made to go along with PW 3. The victim was produced in the Court on next day and thereafter, the victim has been residing with him. He was not asked by the local police which was investigating the matter to handover his mobile telephone on which there had been a ransom call. He has denied of having made any wrong statement either in the FIR or before the Court.

17. The victim has been examined as PW 4, who has reiterated the allegation that at about 5 o'clock in the evening on 15.01.2010, he was asked by the appellant to come to Dumra. He accompanied the appellant and after reaching some distance, he found one Pankaj Singh, waiting for the appellant on a motorcycle. The appellant, the victim and aforementioned Pankaj Singh travelled through the river Lakhandai on the same motorcycle and reached a place somewhere in Nepal where he was kept in a hut. In his presence, his



father was called on telephone and was asked for Rs. 50 lakhs as ransom money. While the accused persons were talking to his father, he was under the threat of being hurt, as a pistol was pointed at him by one of the accused persons. He claims to have given statement before the Magistrate under Section 164 of the Code of Criminal Procedure. About 4 to 5 persons always remained near the hut, guarding him. He could remember the names of Navin Kumar Yadav, Sunil Kumar Yadav, Ramjee Yadav and Ram Pravesh Paswan. (The records reveal that the aforementioned four persons were arrested by the Nepali Police along with arms).

18. At the time of the occurrence, the victim was student of standard 5. He had not made any hue and cry when he was being taken to Nepal through Lakhandai river.

19. Surprisingly, four police officers have taken part in the investigation one after the other, possibly on account of those police officers being transferred mid-



way. They have been examined as PWs 5 to 8, out of whom someone had registered the FIR and the other had taken statement of the witnesses and still another had submitted the charge-sheet. Till the time the investigation continued, as noted above, the appellant had not surrendered to the process of law. He surrendered only after the submission of charge-sheet before the Court and had applied for bail which was rejected. Since then, the appellant is in jail. The 313 statement of the appellant was recorded. To all the circumstances with which he was confronted, he did not say anything positive but denied the accusation in a repetitive manner.

20. From the deposition of witnesses, it becomes clear that the appellant had been instrumental in taking away the victim to a destination in Nepal where he was kept in confinement for ten days. The active part taken by the appellant is confirmed by all the witnesses, including the victim. PWs 1, 2 and 3 have clearly



testified to the fact that the appellant had come to their house on 14.01.2010 and thereafter, on 15.01.2010 and went out along with the victim. The appellant did not show up thereafter, even during the course of investigation till the submission of charge-sheet and, per force, his property was attached and he was declared a permanent absconder.

21. Mr. Uma Shankar Prasad, learned senior Advocate for the appellant has submitted that there are certain glaring facts which stares at the correctness of the prosecution version. He has submitted that the conviction is based solely on the 164 statement of the victim who has deliberately supported the same in his deposition before the Court for reasons which are not known to the appellant. He further submits that it appears to be rather improbable that the appellant who hails from the same area would show such dare-devility in making a reconnaissance a day before taking away the victim and thereafter, taking him from the house to



an unknown destination on the next day. He submits that what is more surprising is that according to the prosecution case, he also called PW 1 and demanded ransom of Rs. 50 lakhs for securing the release of the victim.

22. The aforementioned story-line appears to be rather strange. He further submits that the written report does not appear to have been written in the handwriting of PW 1. A doubt has been raised on the correctness of the prosecution version also on the ground that even when a 13 year old boy of the house was not to be found, the FIR was registered only after a delay of two days with a flimsy explanation that the family members were awaiting the arrival of the victim and that a search was being made for him in the neighborhood.

23. The other ground raised on behalf of the appellant is that the investigating police never went to Nepal for the recovery of the victim and the persons who



were guarding the victim in a hut in the suburbs of Nepal were never put on trial. In what transaction had the victim reached that place is not known. True it is that he has been recovered at the instance of Nepali Police but, non-presence of the appellant in Nepal at the time of the recovery of the boy further creates doubt on the prosecution case of the appellant having abducted/kidnapped the victim.

24. At best, Mr. Prasad contends that if the statements of PWs 1, 2 and 3 are analyzed dispassionately, the only evidence against the appellant would be that he was last seen going out with the victim.

25. Though some attempt has been made by Sri Prasad for demonstrating that there were reasons for PW 2 to falsely implicate the appellant but such efforts were later abandoned. The appellant wanted to communicate that there was some rancour between him and PW 1 as he had, in the past, refused to oblige as a barber, without being paid for such services. This



otherwise appears to be a very weak reason for either the appellant to have kidnapped the son of the family or for PWs 1, 2, 3 and 4 as well for falsely implicating the appellant.

26. Ms. Shashi Bala Verma, learned counsel for the State has on the contrary, submitted that the conviction is not solely based on 164 statement of the victim which by no measure could be called a piece of evidence. The victim has clearly deposed that he was taken away from his house to go to Dumra by the appellant. Midway, there was another person waiting for him and the victim on a motorcycle. All three of them travelled on the same motorcycle and reached Nepal where the victim was confined in a thatched house. The victim also has candidly accepted that he was assaulted and was not taken care of by the appellant and others.

27. Thus, all the inconsistencies pointed out by the appellant recedes in the background.

28. There is no reason for a boy, who at the



time of trial had become a person of 15 years, to falsely depose against the appellant. Had he been making a wrong statement, he would have spoken about the presence of the appellant in the hut where he was kept in confinement. All that he has said is that the appellant had, on some pretext, taken him to Dumra and on way, collected one Pankaj Singh and used his motorcycle for going to Nepal. The presence of the appellant is noted only for a day in Nepal when he is said to have made a call to PW 1 for demanding ransom money of Rs. 50 lakhs for the release of the victim. It has further been pointed out that had there been any intention on the part of PW 1 to have falsely implicated the appellant, such FIR would have been lodged on the first day itself under Section 364 (A) of the IPC. The family members waited for two days, hoping the return of the son of the family but, when nothing was heard about him, the FIR was registered but only under Section 365 of the Indian Penal Code. That was highly justified as the appellant



had accompanied the victim whereafter neither victim nor the appellant were to be heard of.

29. After having heard the learned counsel for the parties and having examined the entire records of this case, we find that there has not been any delay in reporting the matter to the police. Normally, if a minor member of a family is not to be found for a day, there is always a feverish activity and police is informed. In the present case, waiting two days for the victim to show up is not such a delay which would discredit the prosecution version in its totality. The FIR lodged by PW 1 appears to be without any exaggeration. The intention of PW 1 was only to secure the release or recovery of his minor son. Shortly thereafter, there was a ransom call by the appellant himself, which fact was promptly reported to the police. However, the police could swing into action and the victim was recovered from Nepal. This story does not have any chinks for it to be rejected. PW 3 knew the appellant from before which also is evident



from the fact that he remembered the telephone number of the appellant on which an attempt was made to call but was of no avail as the telephone was not kept in operative condition. There does not appear to be any gap in the prosecution story as it is very natural for any person not to doubt the intentions of a known person.

30. What was the conversation between the victim and the appellant on 14.01.2010 and thereafter on 15.01.2010 and why did the victim agree to go along with the appellant and that also without asking his family members is no ground for doubting the prosecution case. A young boy could always agree to go out of the house to see the brighter lights of a neighboring country. There is always an expectation in the mind of the family members that the person going out of the house for a short visit would come back. There was no lingering doubt in the mind of family members including PWs 1, 2 and 3 that the appellant had harboured the intention of kidnapping the victim. It was only after a day of lodging



of the FIR under Section 365 IPC that the Informant (PW 3) received a ransom call.

31. We have given out anxious consideration over the fact that no hue and cry was made by the victim while he was being taken to Nepal. However, on close analysis of the evidence on record, it does not appear to be strange at all. The victim was never blindfolded or informed that he is in the captivity of the appellant. Willingly, the victim had accompanied the appellant. Even when an associate of the appellant met them midway, there was no reason for the victim to doubt them. It was only when all of them reached Nepal and the victim was made to stay in a hut, which was guarded by four persons that he realized that he has been put in confinement after being abducted. This being the situation, it is quite natural that he did not raise any *hulla* while he was being taken to such unknown destination.

32. We have also carefully analyzed the entire



evidence in order to see whether the appellant was arrested in Nepal at the time of the recovery of PW 4.

33. Though we did not find any evidence with respect to his presence in Nepal at the time of the recovery of PW 4 but, that does not absolve the appellant of the accusation raised against him, specially in view of the fact that PWs 1, 2, 3 saw the appellant going out of the house along with PW 4 and thereafter, there was an eerie silence from his side. He did not keep his telephone in operative condition. He called PW 3 only on the next day with a demand of Rs. 50 lakhs.

34. Thus, it is not difficult to arrive at the conclusion that the appellant had taken an active part in abducting/kidnapping the victim for the purposes of taking money from his father. What could be the reason for a barber of a village to remain absconding for so many days and showing up only after his property was attached for his having been declared an absconder. No attempt has been made by the appellant during trial to



explain away his absence for all this while when the case was being investigated. That apart, we do not have any reasons to doubt the correctness of the deposition given by PW 4 and his having identified the appellant. They are no strangers. The appellant appears to be known to the family from before. The trust of the victim appears to have been betrayed only when he was confined in the hut in the suburbs of Nepal.

35. Thus, the evidence in all respect is complete so far as the accusation against the appellant is concerned. There could have been no other purpose except for coercing the family of the victim in parting with money for securing the release of the victim. This brings the case within the four corners of Section 304 (A) of the Indian Penal Code which provides for only two punishments viz. death or life imprisonment.

36. That the appellant was identified by the victim of making a ransom call during his captivity and his clear statement that he was assaulted during the



period of his captivity and was also kept under threat of being bodily harmed regularly, further affirms the ingredients of the offence under Section 364 (A) of the Indian Penal Code.

37. For the aforementioned reasons, we do not find any reason to interfere with the judgment of the trial Court convicting the appellant under Section 364 (A) of the IPC and sentencing him to go under the rigorous imprisonment for life, to pay a fine of Rs. 20,000/- and in default of payment of fine to further suffer Rigorous Imprisonment for six months.

38. The appeal is thus dismissed.

(Ashutosh Kumar, J)

(Harish Kumar, J)

rishi/shivank

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	12.05.2023
Transmission Date	

