

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.665 of 2015

Arising Out of PS. Case No.-11 Year-2009 Thana- KHARHAGPUR District- Munger

Shoshit Kumar @ Suchit Kumar, Son of Indradeo Mandal, R/o Dohal Pahari,
P.S.-Asharganj, District-Munger.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 678 of 2015

Arising Out of PS. Case No.-11 Year-2009 Thana- KHARHAGPUR District- Munger

Uday Kumar Mandal @ Uday Mandal, Son of Yugal Mandal, R/o Village-
Baijalpur, P.S.-Kharagpur, District-Munger.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 773 of 2015

Arising Out of PS. Case No.-11 Year-2009 Thana- KHARHAGPUR District- Munger

Pankaj Mandal, Son of Yogendra Mandal, R/o Village-Katahara, P.S.-
Sultanganj, District-Bhagalpur.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 307 of 2016

Arising Out of PS. Case No.-11 Year-2009 Thana- KHARHAGPUR District- Munger

Barun Mandal, S/o Yogendra Mandal, R/o Village-Katahra, P.S.-Sultanganj,
District-Bhagalpur.



... .. Appellant/s
Versus
The State of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 665 of 2015)

For the Appellant/s : Mr. Subodh Kumar Jha, Adv.

For the State : Mr. D.K. Sinha, APP

(In CRIMINAL APPEAL (DB) No. 678 of 2015)

For the Appellant/s : Mr. Subodh Kumar Jha, Adv.

Mr. Prince Kumar Mishra, Adv.

Mr. Pranav Kumar Jha, Adv.

For the State : Mr. D.K. Sinha, APP

(In CRIMINAL APPEAL (DB) No. 773 of 2015)

For the Appellant/s : Mr. Indu Bhushan, Adv.

For the State : Mr. D.K. Sinha, APP

(In CRIMINAL APPEAL (DB) No. 307 of 2016)

For the Appellant/s : Mr. Davendra Kumar Pandey, Adv.

For the State : Mr. D.K. Sinha, APP

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 04-09-2023

All the four appeals have been taken up together and are being disposed off by this common judgment.

2. We have heard Mr. Subodh Kumar Jha, Mr. Indu Bhushan and Mr. Davendra Kumar Pandey, the learned Advocates for the appellants in Cr. Appeal (DB) Nos. 678 of 2015, 773 of 2015 and 307 of 2016



respectively.

3. Nobody has appeared on behalf of the appellant/Shoshit Kumar @ Suchit Kumar in Cr. Appeal (DB) No. 665 of 2015. However, on the request of the Court, Mr. Subodh Kumar Jha, the learned Advocate, has assisted us on behalf of the appellant/Shoshit Kumar @ Suchit Kumar.

4. The State, in all these appeals, has been represented by Mr. Dilip Kumar Sinha, the learned APP.

5. It may be noted that the appellants/Shoshit Kumar @ Suchit Kumar, Uday Kumar Mandal @ Uday Mandal and Pankaj Mandal were tried by the learned Addl. Sessions Judge-V, Munger in Sessions Trial No. 496 of 2009, whereas the appellant/Barun Mandal [Cr. Appeal (DB) No. 307 of 2016] was tried by the same learned Judge but in a different sessions trial, namely, Sessions Trial No. 481 of 2012. The investigation with respect to appellant/Barun Mandal was kept pending for a while, whereafter he too was sent up



for trial. This was the reason for two separate trials.

6. The appellants/Shoshit Kumar @ Suchit Kumar, Uday Kumar Mandal @ Uday Mandal and Pankaj Mandal have been convicted under Section 364A/34 of the I.P.C. *vide* judgment dated 27.07.2015 passed by the learned Addl. Sessions Judge-V, Munger in Sessions Trial No. 496 of 2009, arising out of Kharagpur P.S. Case No. 11 of 2009, and by order dated 29.07.2015, they have been sentenced to undergo imprisonment for life, to pay a fine of Rs. 5,000/- each and in default of payment for fine, to further suffer S.I. for one month.

7. The appellant/Barun Mandal has been convicted under Section 364A/34 of the I.P.C. *vide* judgment dated 05.11.2015 in Sessions Trial No. 481 of 2012, arising out of Kharagpur P.S. Case No. 11 of 2009, and by order dated 06.11.2015, he too has been sentenced to undergo imprisonment for life, to pay a fine of Rs. 5,000/- with the same default clause referred to above.



8. The references to the witnesses in the case of appellant/Barun Mandal [Cr. Appeal (DB) No. 307 of 2016] would be in the context of the judgment passed in Sessions Trial No. 496 of 2009.

9. The minor son of Basuki Yadav (PW-6), namely, Ajay Kumar was abducted and he raised suspicion on Ajit Kumar and Uday Kumar, who are own brothers and a neighbour of PW-6. The First Information Report was lodged on 11.01.2019 by PW-6 alleging that his minor son/Ajay Kumar went out of his house along with Ajit Kumar to play, but did not come back. When Ajit Kumar was questioned, he did not come out with any positive information. This made PW-6 suspect that perhaps Ajit Kumar had misled his son and had taken him somewhere. Later, PW-6 learnt through his villagers that the elder brother of afore-noted Ajit Kumar had come to his house on a motorcycle along with an unknown person and, thereafter, had left the village home. He too had not come back to his home. This was



the reason for PW-6 to suspect the hands of the two brothers, namely, Ajit Kumar and Uday Kumar in the kidnapping of his son.

10. On the basis of the afore-noted written report, Kharagpur P.S. Case No. 11 of 2009, dated 11.01.2009, was registered for investigation under Sections 363, 365 and 34 of the I.P.C. Section 364 of the I.P.C. was later added on 16.01.2009 under the orders of the Court.

11. The police, after investigation, submitted charge sheet against the appellants/Shoshit Kumar @ Suchit Kumar, Uday Kumar Mandal @ Uday Mandal and Pankaj Mandal as also Ajit, but since Ajit was found to be a juvenile on the date of the occurrence, his case was referred to the Juvenile Justice Board. Later, charge-sheet was submitted against Barun Mandal, as noted above, and all the appellants were tried, though in different sessions trials.

12. In first of the sessions trials, namely,



Sessions Trial No. 496 of 2009, the Trial Court examined nine witnesses on behalf of the prosecution, whereas in Sessions Trial No. 481 of 2012, fourteen prosecution witnesses were examined.

13. Basuki Yadav (PW-6), who is the father of the victim, stated before the Trial Court that the occurrence took place on 10th of January, 2009 at about 10 O' Clock in the day. Ajit, his neighbour, had taken his son away from the house for playing but when his son did not return till about 03:00 PM, a search was made for him but to no avail. As alleged in the F.I.R., PW-6 has further stated before the Trial Court that Ajit, on being asked, did not say anything. At about 2 O' Clock in the day, the appellant/Uday Kumar Mandal (the elder brother of Ajit) is said to have come along with an outsider to his home and shortly thereafter, both of them went away. For the whole day, the search operation continued. At about 08:30 in the night on the same day, he received a telephonic call from an



unknown caller asking him to pay up Rs. 4,00,000/- as ransom amount for securing the release of his son. The PW-6, thereafter, went to the Kharagpur police station on the next day along with his two associates and gave a written report. He has further admitted during the trial that his son was recovered from Maheshkhoot, who was in the company of the appellant/Pankaj Mandal. He is categorical in his assertion that his son was kidnapped by Pankaj Mandal, Ajit Mandal, Uday Mandal, Shoshit Mandal and Bhola Mandal. He had not seen any one of them taking away the victim except Ajit, a contemporary of the victim. He has further admitted before the Trial Court that for the first time, he made the statement before the police on 11th of January, 2009 and, thereafter, for the first time, he had deposed before the Court.

14. What is to be noted here is that the PW-6 had received the ransom call on his mobile telephone, the details of which he neither disclosed during the trial



nor did he speak about it in the written report which he had lodged on 11th of January, 2009. This, it has been asserted by the appellants, was only an embellishment in order to bring home the mischief of Section 364A of the I.P.C.

15. The victim/Ajay Kumar, at the trial, was first tested by the Trial Court about his competence to depose before a Court of law. On the Trial Court being satisfied about his mental faculties, it recorded his deposition. He has stated that on 10.01.2009, Ajit took him to a field for witnessing a match. He remained in the field till about evening, whereafter he was taken to a place which was not on way to his home. No sooner did he realize that he was being taken to another place, he refused to go with Ajit and consequently Ajit chased him. As a result of all this, the victim (PW-7) was injured in his legs and it was at that time that he showed his anger at Ajit. In the meantime, a person with a tall stature came and threatened him. Ajit and the person who had



arrived at the scene of occurrence took him to Dhol Pahadi, where he found appellant/Uday Kumar. He was handed over to two persons, whereafter Ajit and Uday, both, left the place. The victim was then taken near the railway tracks where appellant/Pankaj and one Anil were waiting and he was handed over to them. He was, thereafter, taken to Sultanganj by Pankaj and Anil and was kept somewhere in the night. On the next day, he was made to ride on a boat and was taken to a village named Sondhya. He was put up in the house of an old lady, who was addressed by Pankaj as his aunt. When Pankaj and Anil went to attend to the call of nature on the next day, the victim is said to have disclosed his story to the old house-lady.

16. According to the deposition of the victim, the land-lady warned Pankaj and Anil and asked them to go away as the police would come looking for them. Thereafter, Pankaj and Anil brought the victim to Maheshkhoot Chowk where a police officer was waiting.



He apprehended Pankaj and brought the victim to Kharagpur police station where he stayed for the whole of the night. Next day, he was brought to Munger Court to make a statement before the Court. He has identified his statement made at Munger, which has been brought on record as Ext.-1. There was no fight with the family of Ajit and Ajay and he also had never fought with Ajit. Ajit never studied with him, but the victim was friends with him. He could not but name the person who had taken him to Uday along with Ajit. In some other connection, the victim has named the appellant/Shoshit also.

17. From the deposition of the victim, two things appear to be very clear. Appellant/Uday knew about the victim being escorted by his younger brother/Ajit to a destination which was prefixed. Uday and Ajit, after handing over the custody of the victim to Pankaj and Anil, left the company of the victim and went away. Pankaj and Anil brought him to the house of a



lady after crossing a river. The lady, perhaps, did not know that the victim was in the captivity of Pankaj and Anil. She came to learn only when the victim got an opportunity to speak to her in the absence of Pankaj and Anil.

18. It is also to be noted that Anil was neither suspected nor his identity was ever inquired or investigated nor any person by the name of Anil was put on trial.

19. Another very noticeable fact is that on the asking of the house lady, if the victim is to be believed totally, he was brought to Maheshkhoot where the police officer was present from before, then it presupposes that there was no raid by the police for searching out the victim. This definitely leads to the inference that there was no disclosure by any one of the accused persons. They may not have been arrested and interrogated by the police prior to the victim having been brought to a place where he was taken custody of by the



police officer.

20. According to the prosecution version, appellant/Shoshit was a resident of Dhol Pahadia where the victim was first taken to. It appears from the deposition of the witnesses that appellant/Shoshit was arrested and a confession was extracted from him. Thereafter, it has been shown by the prosecution that the recovery of the victim was at the instance of afore-noted appellant/Shoshit. We say so for the reason that there is a recovery memo on record, which reflects that the victim was recovered at Maheshkhoot Chowk by the police. In the afore-noted recovery memo, there is an endorsement of appellant/Shoshit that this recovery was made at his instance.

21. This, as has rightly been pointed out by the learned Advocates for the appellants, was only a paper work to indicate that the police had investigated and had made efforts to recover the boy and laid the blame on the appellants for them to be charged,



prosecuted and convicted for the offence under Section 364A of the I.P.C.

22. The afore-noted proposition of the appellants further gets confirmed by the deposition of the I.O. of this case, namely, Jagdish Chaudhary, who has been examined as PW-8. Though he has made a categorical statement before the Trial Court that the victim was recovered from the possession of the appellant/Pankaj Mandal and that a mobile telephone also was recovered from him, which was seized but has not stated anything which would demonstrate that any investigation was made against the charge of PW-6 of his having received any ransom call for securing the release of the victim. He admits at the trial that during course of investigation, he took the statement of the witnesses and arrested the accused persons and also recorded their confessions. A vague and general statement has been made by him that from the statement of the accused persons, the victim was



recovered and a case under Section 364A/34 of the I.P.C. was registered against the appellants.

23. Whose statement led to the recovery of the boy is not known.

24. What was the statement made by appellant/Shoshit has also not been stated by PW-8. Which part of the statement of any one of the accused persons having made any confession, was admissible under Section 27 of the Evidence Act, remained totally obscure. This, therefore, leads to the inference that the accused persons, of their own, brought the victim to Maheshkhoot and the police was informed to take charge of the victim.

25. Was it because of any pressure mounted by the police or good sense having prevailed upon the miscreants/appellants, remains unknown.

26. Had it not been the case, the police would have gone to the place where the victim was kept in captivity. There is nothing on record to indicate that



there was any communication between the police, the land-lady or Pankaj Mandal and perhaps Anil, who does not seem to have been on the radar of the police at all. It, therefore, appears that the police had only been groping in the dark and the victim was made to reach the police station at the instance of the accused persons only, who may have had a change of heart and mind within the time span of approximately nine days.

27. What strikes us most, while going through the deposition of witnesses, is that PW-6 did not ever get any ransom call after the evening of 10th of January, 2009.

28. If at all the story of ransom call received by PW-6 would have been true, he would have narrated about that in his written report and the case would have been lodged under Section 364A of the I.P.C. initially and not only under Section 363 of the I.P.C.

29. The victim has all along maintained that he was kept in captivity but was never ill treated. He



was never under the threat for his life, except for one occasion, when he was abusing his friend/Ajit for having misled him and a tall man had appeared at the scene. Who was this tall man also has not been investigated. The victim could not tell his name.

30. Was it all a game of children?

31. Ajit and Uday stay next doors. PW-6 does not have any enmity or dispute with the father of Ajit and Uday. Ajit is a friend of the victim. These are some of the facts which make the case of the prosecution, so far as it relates to the offence under Section 364A of the I.P.C., to be doubtful.

32. However, from the deposition of other witnesses, who have made very cryptic statements at the trial, two facts have remained undisputed.

33. The victim was taken to the field either to play or to see the match by Ajit. None of the witnesses had seen anything beyond this. The other fact which has been seen by the witnesses is the arrival of Uday in the



village along with an unknown person, both of whom stayed in the village for a short while, whereafter both of them went away. These two facts, of themselves, may not constitute any evidence to be taken as a circumstance against the appellants. That the victim did not come back and Ajit did not have reasonable explanation for the same is but a circumstance, which cannot be ignored. The victim, therefore, was abducted/kidnapped from the lawful guardianship of his parents.

34. Section 361 of the I.P.C. defines kidnapping from lawful guardianship, which provides that whoever takes or entices any minor under 16 years of age, if a male, or under 18 years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship. The expression "lawful guardian" in this context includes



any person lawfully entrusted with the care or custody of such minor or other person. The afore-noted offence is punishable under Section 363 of the I.P.C., providing for punishment with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

35. None of the learned Advocates appearing for the parties have been able to tell us about the outcome of the case against Ajit the juvenile.

36. The appellants/Uday Kumar Mandal and Pankaj Mandal were definitely in the company of the victim while he was in the captivity after being kidnapped from the lawful guardianship of his parents.

37. There is but no material against appellant/Shoshit Kumar except for a vague suspicion against him and his so-called confession before the police. The very fact that he was made to put his endorsement on the recovery memo, justifies the contention of the appellants that only paper work was



done for bringing the case within the four corners of the mischief of Section 364A of the I.P.C.; otherwise, the story of ransom call by PW-6 would not have been introduced for the first time at the trial. That there was no investigation with respect to any call having been made on the mobile telephone of PW-6, ought not to be seen as a mere lapse on the part of the prosecution, especially when the prosecution has not put up any case of any ransom demand, thus not necessitating any investigation on that account.

38. The appellant/Barun Mandal appears to have been put on trial only on the basis of confession of appellant/Shoshit Kumar.

39. For this reason, we find the conviction of appellant/Shoshit Kumar @ Suchit Kumar [Cr. Appeal (DB) No. 665 of 2015] and appellant/Barun Mandal [Cr. Appeal (DB) No. 307 of 2016] to be based on "no evidence" at all.

40. The respective impugned judgment of



conviction and order of sentence with respect to afore-noted two appellants, referred to above, are thus set-aside. The appellants, namely, Shoshit Kumar @ Suchit Kumar and Barun Mandal, are, thus, acquitted of the charges levelled against them.

41. Cr. Appeal (DB) Nos. 665 of 2015 and 307 of 2016 are, accordingly, allowed.

42. The appellant/Shoshit Kumar @ Suchit Kumar [Cr. Appeal (DB) No. 665 of 2015] is on bail. His liabilities under the bail-bonds are cancelled.

43. The appellant/Barun Mandal [Cr. Appeal (DB) No. 307 of 2016] is in custody. He is directed to be set at liberty forthwith unless his detention is required in any other case.

44. The conviction of appellant/Pankaj Mandal [Cr. Appeal (DB) No. 773 of 2015] and appellant/Uday Kumar Mandal @ Uday Mandal [Cr. Appeal (DB) No. 678 of 2015] is converted from Section 364A/34 of the I.P.C. to Section 363 of the I.P.C.



45. The reason for our saying so is that there is no evidence to indicate that the kidnapping was either for the purposes of maiming a minor for begging or for murdering him or for obtaining ransom, thereby inviting the application of Sections 363A, 364 and 364A of the I.P.C.

46. For the reason of the purpose of kidnapping not have been established, the conviction of the appellants/Uday Kumar Mandal @ Uday Mandal and Pankaj Mandal, as noted above, is converted to one under Section 363 of the I.P.C.

47. A sentence of seven years to both the appellants/Uday Kumar Mandal @ Uday Mandal and Pankaj Mandal would, in our estimation, be sufficient to meet the ends of justice.

48. Their sentence, therefore, is also altered and both the appellants/Uday Kumar Mandal @ Uday Mandal and Pankaj Mandal are sentenced to undergo R.I. for seven years.



49. The learned Advocates appearing for the afore-noted two appellants have informed this Court that the appellant/Pankaj Mandal [Cr. Appeal (DB) No. 773 of 2015] has remained in jail for about thirteen years, whereas the appellant/Uday Kumar Mandal @ Uday Mandal [Cr. Appeal (DB) No. 678 of 2015] has remained in custody for seven years, whereafter both of them were released on bail. Both of them have thus served the sentence imposed upon them.

50. We do not find any necessity of imposing any fine on the afore-noted two appellants.

51. Since the appellant/Uday Kumar Mandal @ Uday Mandal [Cr. Appeal (DB) No. 678 of 2015] and the appellant/Pankaj Mandal [Cr. Appeal (DB) No. 773 of 2015] are on bail, their liabilities under the bail-bonds are cancelled.

52. All the appeals are, accordingly, disposed off.

53. Let a copy of this judgment be



dispatched to the Superintendent of the concerned Jail
forthwith for compliance and record.

54. The records of these appeals be returned
to the Trial Court forthwith.

55. Interlocutory application/s, if any, in all
the appeals, also stand disposed off accordingly.

(Ashutosh Kumar, J)

(Alok Kumar Pandey, J)

Praveen-II/Shahzad

AFR/NAFR	AFR
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