

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.160 of 2023

Arising Out of PS. Case No.-111 Year-2006 Thana- BUXAR District- Buxar

Lalan Mishra, Son of Late Yadunandan Mishra, Resident of Village - Jigina,
P.S.- Sikraul, District- Buxar. Presently residing at Panch Mandir Charitravan,
P.S.- Buxar Town, District – Buxar. Appellant

Versus

1. The State of Bihar.
2. Shiv Kumar Pandey, Son of Late Ramdhari Pandey, Resident of Village -
Parmanpur, P.S.- Koransarai, District - Buxar.
3. Brij Bihari Pandey, Son of Late Ramdhari Pandey, Resident of Village -
Parmanpur, P.S.- Koransarai, District - Buxar.
4. Daya Shankar Pandey, Son of Shiv Kumar Pandey, Resident of Village -
Parmanpur, P.S.- Koransarai, District - Buxar.
5. Shesh Kumari Devi, Wife of Brij Bihari Pandey, (Wrongly written in
judgment as Son of Brij Bihari Pandey), Resident of Village - Parmanpur,
P.S.- Koransarai, District - Buxar.

... .. Respondents

Appearance :

For the Appellant	:	Mr. Surendra Kumar Singh, Advocate Mr. Vishwanand Upadhyay, Advocate
For the State	:	Mr. Manish Kumar, Additional PP
For Respondent Nos. 2 to 5	:	Mr. R.K. Sinha No. 2, Advocate Mr. Gajendra Nath Ojha, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE JUSTICE SMT. G. ANUPAMA CHAKRAVARTHY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 04-03-2024

Heard Mr. Surendra Kumar Singh, learned counsel for
the appellant, Mr. R.K. Sinha No. 2, learned counsel for
respondent nos. 2 to 5 and Mr. Manish Kumar, learned Additional
PP for the State.

2. This appeal has been preferred by the informant for
setting aside the judgment dated 28.11.2022, passed by learned



Additional Sessions Judge-IV, Buxar in Sessions Trial No. 432 of 2006 arising out of Buxar Town P.S. Case No. 111 of 2006 to the extent that the learned trial court has been pleased to acquit the respondent nos. 2 to 5 from the charges under Section 364 A and Section 120 B of the Indian Penal Code.

Brief Facts of the Case

3. As per the prosecution story, the informant submitted a written report on 20.03.2006 alleging that on 11.03.2006 at about 06:00 P.M. his nephew Nitesh Kumar suddenly went missing when the informant with his relative Shiv Kumar Pandey had gone to village Manjharua to meet Shrinivas Upadhyay in connection with his daughter's marriage. It is stated that prior to 2-3 days of the occurrence, one Satyendra Pandey who is the nephew of said Shiv Kumar Pandey had come to his house who used to take the missing boy out on the pretext of giving him some toffee and sweets. Admit card of said Satyendra Pandey is left in his house which bears his photograph. Finding no trace of the nephew of the informant, the lady inmates started weeping due to which crowd gathered there and from the crowd, someone said that he had seen the victim boy going with the person who had come to his house 2-3 days earlier. Then, family members started searching him but he could not be located. In the meantime, the informant returned to



his house with Shiv Kumar Pandey. The matter was disclosed by the family members to the informant and Shiv Kumar Pandey then the informant proceeded for police station to lodge FIR but on the assurance of Shiv Kumar Pandey (elder father of Satyendra Pandey) that he would get his nephew returned from Satyendra, he lodged only *Sanha* in the police station. Thereafter, the informant along with him went to the village Parmanpur where Satyendra Kumar Pandey was found missing, his father and mother assured him to pass the information on his return to house and would make the victim available but they did not do so. On 14.03.2006, the informant with his relatives and friends went to village Parmanpur on getting information that Satyendra Pandey has returned to his house where he met with Satyendra Pandey and his elder father. The informant started talking about his nephew then he initially stated that it will take time but on repeated request he accepted that he has done this in greed of money but the victim boy is not in his hand for which he would have to pay Rs.2,50,000/-. On request, he became ready to return his nephew on payment of Rs.1,50,000/-. The parents and elder father of Satyendra also assured of return of his nephew and Satyendra asked him to provide Rs.50,000/- by tomorrow and rest he should pay on 18.03.2006 by 05:00 P.M. and his nephew would meet him by 06:00-06:30 P.M. On 15.03.2006,



the informant provided him Rs.25,000/- in the hand of Brij Bihari Pandey and they assured him that Satyendra would do his work. Satyendra also asked him to come with rest amount on 18.03.2006. On 18.03.2006, the informant with his family members went to village Parmanpur where Satyendra Pandey, his parents and his elder brother asked about the money then the informant said them to bring Nitesh first before him then money would be given on which Satyendra Pandey, Brij Bihari Pandey and Shesh Kumari Devi started to avoid the matter and they did not become ready to return Nitesh without Rs.2,50,000/-. The informant returned to his house. The informant alleged that still they have been demanding Rs.2,50,000/- and assuring about return of Nitesh.

Submissions on behalf of the Appellant

4. Learned counsel for the appellant submits that in Sessions Trial No. 432 of 2006, altogether five accused persons were facing the trial. The prosecution examined as many as nine witnesses in support of its case and exhibited the written report submitted by the informant (Exhibit-1), the endorsement of the Police Officer on the written report (Exhibit-2) and the formal FIR of Case No. 111 of 2006 (Exhibit-3). The defence did not examine any witness but produced the certified copy of the case filed before the court of learned Sub-Judge Ist, Buxar being Miscellaneous Case



No. 37 of 2019 (Exhibit-D1) and the certified copy of the order dated 23.01.2021, passed by the learned Sub-Judge Ist, Buxar in Miscellaneous Case No. 37 of 2019, whereby the Execution Case No. 6 of 2007 (Shiv Kumar Pandey vs. Lalan Mishra) has been restored (Exhibit-D2).

5. It is submitted that the learned trial court has upon appreciation of the evidences though convicted one of the accused Satyendra Pandey but acquitted the other accused persons, who are respondent nos. 2 to 5 in the present appeal. Questioning the acquittal of respondent nos. 2 to 5, the present appeal has been preferred.

6. Learned counsel for the appellant submits that PW-1, Akshay Kumar Dubey (maternal grandfather of the victim boy) has stated that on the second day of the occurrence, he heard about the kidnapping of Nitesh. He heard from Lalan Mishra that Satyendra Pandey of Parmanpur who is his relative use to come at his residence and said Satyendra Pandey had taken away Nitesh aged about eight years on the pretext of providing him sweets. This witness went to the village of Satyendra Pandey with Lalan Mishra and the brother of Lalan Mishra who is known as Doctor. He claims that there in village Parmanpur, he met Shiv Kumar Pandey, Satyendra Pandey, Brij Bihari Pandey, mother of



Satyendra Pandey and one person, namely, Babua Ji, who told PW-1 that they are not aware about the Nitesh. PW-1 claimed that when wailing and weeping, he told Satyendra that he is his *Bhagina* in relation, so he should tell him about Nitesh then Satyendra demanded Rs. 2,50,000/- and later on reduced it to Rs. 1,50,000/-. Satyendra told him that the boy had gone in the hands of others, therefore, he demanded a sum of Rs. 25,000/-. PW-1 has stated that because they were not having Rs. 25,000/- with them, they returned and again went with a sum of Rs. 25000/- to the village Parmanpur. Lalan Mishra, Jitendra Mishra, Doctor and PW-1 had gone with the sum of Rs. 25,000/- and when they were handing over Rs. 25,000/- to Satyendra then he told them that he would not take this money and they should hand over this money to his father (Brij Bihari Pandey). PW-1 claimed that Brij Bihari Pandey received Rs. 25,000/- and told them to give three days time to bring back the boy but even after three days, the boy was not brought and even the money was not returned. This witness has stated in paragraph '8' that in respect of the present occurrence Police had not inquired from him and his statement was not taken at the house of Lalan Mishra, his statement was recorded at Police Station.



7. It is submitted that Jitendra Mishra (PW-2) had also heard about the missing of Nitesh from his uncle Ravindra Mishra. According to this witness, Lalal Mishra told Shiv Kumar Pandey that Satyendra Pandey had taken away Nitesh, therefore, he will lodge a case. On this, Shiv Kumar Pandey is said to have requested Lalan Mishra not to lodge a case and if Satyendra Pandey would have taken away the boy, then he would make him available. Lalan Mishra and Shiv Kumar Pandey both had gone to Police Station to lodge *Sanha* but he cannot say as to which Police Station they had gone. It is submitted that PW-2 has also supported the statements of PW-1 that they had gone with a sum of Rs. 25,000/- to give it to Satyendra Pandey who told them to hand over the amount to his father Brij Bihari Pandey.

8. In his cross-examination, PW-2 has stated that his grandfather is four brothers, namely, (1) Mahadhan Mishra (2) Liladhar Mishra (3) Yadunandan Mishra and (4) Shahdeo Mishra. Liladhar Mishra died issueless whereas his youngest grandfather Shahdeo Mishra had five daughters, one of them is Shesh Kumari Devi (respondent no. 5). Satyendra Pandey is son of Shesh Kumari Devi, Brij Bihari Pandey is the husband of Shesh Kumari Devi and Shiv Kumar Pandey is the *Bhaisur*, whereas accused Daya Shankar Pandey @ Babua Pandey is the eldest son of Shiv Kumar



Pandey. This witness has stated in paragraph '9' that he had never gone anywhere in search of Nitesh. He has stated that when he came to Buxar then Lalan Mishra had told him that Satyendra Pandey had come to Buxar residence but he did not remember whether he had told these facts to the Police.

9. Nirbhay Narayan Mishra (PW-3) has stated that he received information on 11.03.2006 at 10:00 P.M. (night) that his son Nitesh Kumar had been missing from 6 O'clock. His son was staying with his elder brother Lalan Mishra at Buxar for studies. This witness came to Buxar on the next day in the morning and he was told that Satyendra Pandey was staying in his house for 3-4 days. There was a crowd at the house and someone from the crowd said that he had seen that person who was staying talking to Nitesh. In his statement, PW-3 has stated that his brother and Shiv Kumar Pandey had got recorded *Sanha* in the police station and they had gone to Parmanpur on 12.03.2006, when they came back, they told that Satyendra Pandey was absconding, thereafter on 13.03.2006, PW-3 returned his village- Jigina. He has stated that again on 14.03.2006 his brother, Ravindra Mishra, Akshay Kumar Dubey and Jitendra Mishra went to village Parmanpur where Satyendra Pandey admitted that he had brought the boy and demanded Rs.2,50,000/-. In his cross-examination, this witness has



stated that he had personally not gone in search of his son. This witness has further stated that his brother Lalan Mishra was living at Buxar in Panch Mandir on rent. There were other tenants also in the Panch Mandir. He has stated that his son was studying in Public Children School, he cannot say whether his son had gone to school on the date of occurrence because he was in village. His son had not gone to village in the holidays. In the year 2006, Holi festival was on 14.03.2006. In his cross-examination, he has stated that Shesh Kumari Devi is his cousin sister, she is the daughter of Sahdeo Mishra who has no male child. He has stated that he is not aware that Sahdeo Mishra had got 14 *bighas* of land. He has admitted that Sahdeo Mishra was living in the same house in which this witness is living and presently his Aunt was alive and she is also living in the same house. He has stated that there is no partition of the agricultural land and the house among them. He has stated that he is not aware that Sahdeo Mishra has the same share which he has got. This witness was suggested that Shesh Kumari Devi and her entire family members have been falsely implicated in this case just to pressurize them to execute a deed of relinquishment in respect of their share. This witness has stated that if his Aunt would demand her share then he is ready to provide her the same.



10. Arvind Kumar Chaubey (PW-4) has stated that he came to know about the kidnapping of Nitesh on 12.03.2006 at evening hour. He reached Buxar on 20.03.2006 and went to the house of Lalan Mishra at 07:30 P.M. He was told by his sister that Lalan Mishra had gone to the police station. Lalan Mishra return on the same day at 08:30 P.M. and with him Daroga Ji also came. Lalan Mishra told him about the demand of Rs.2,50,000/-. This witness claims that on 11.03.2006 when he was going to Teacher Colony through Naulakha Mandir Road at 06:30 P.M., he had seen there Satyendra who told him that he was taking away Nitesh (victim) for a walk. This witness has stated in his cross-examination that Lalan Mishra is his brother-in-law (*behnoi*).

11. It is submitted that prosecution witness, namely, Ravindra Mishra (PW-5) and Lalan Mishra (PW-6) have also supported the prosecution case. Lalan Mishra (PW-6) has stated that he had gone to the police station to lodge the case on 20.03.2006 at 07:00 P.M. In paragraph '9', he has stated that after one month of the occurrence, his younger brother Ravindra Kumar Mishra was going in search of Nitesh then near Buxar round about *chauraha* Babua Pandey @ Dayashankar Pandey stopped the motorcycle and demanded Rs. 2,50,000/- and threatened that if amount is not given then they will have to repent.



12. Learned counsel submits that despite the consistent prosecution evidence, the learned trial court has acquitted Respondent Nos. 2 to 5.

Submissions on behalf of the Respondents

13. On the other hand, learned counsel for the Respondent Nos. 2 to 5 and learned Additional PP for the State have supported the judgment of the learned trial court. Referring to the testimony of the Investigating Officer Pandit Ranjit Singh (PW-7), learned counsel points out that in paragraph '6' of his deposition, PW-7 has stated that after registration of the case he had not gone to the village Majhia for investigation and had not recorded the statement of Shri Nivas Upadhyay. He had not tried to search out the person who had shouted from the crowd that the boy who had come 2-3 days back had kidnapped Nitesh. He had not investigated about the demand of money. He had not recorded statement of any independent witness except that of two persons Markandey Pandey and Baban Pandey. Investigating Officer (PW-7) had not gone to village Jigina in search of the boy and he had not investigated about the place where he was studying. PW-7 has stated that it is true that in paragraph '45' of the case diary, he has recorded that when he inquired from the village Parmanpur and other sources, he came to know that there is a dispute over



partition of land between both the parties and the informant Lalan Mishra had taken a sum of Rs.60,000/- from accused Shiv Kumar Pandey. Investigating Officer has stated that prior to 12.04.2006, the name of Babua Pandey @ Dayashankar Pandey had not come in this case. In paragraph '12', the Investigating Officer has contradicted the statement of the prosecution witnesses. He has stated that Akshay Kumar Dubey (PW-1) had not stated that Lalan Mishra told him that Satyendra Pandey of village Parmanpur had gone to his residence. He had not told to the Investigating Officer that Satyendra Pandey had taken away the boy on the pretext of providing him sweets.

14. The Investigating Officer has further stated in paragraph '12' that he was not told that a sum of Rs.25,000/- was being given to Satyendra then Satyendra told to hand over the money to his father. The Investigating Officer has contradicted the prosecution witnesses and said that he was not told that Brij Bihari Pandey had received Rs.25,000/- and said that the boy will go back within three days. The Investigating Officer has also contradicted the prosecution witnesses Jitendra Mishra, Arvind Kumar Chaubey and Lalan Mishra.



15. Learned counsel submits that BabanJi Pandey (PW-8) and Markandey Pandey (PW-9) have not supported the prosecution case and they were declared hostile.

16. Learned counsel submits that from the entire materials on the record, the learned trial court has rightly concluded as regards Respondent Nos. 2 to 4 that the prosecution had failed to prove their guilt beyond all reasonable doubts and these persons cannot be held guilty on the basis of the materials on the record.

Consideration

17. We have heard learned counsel for the parties and perused the entire records. It is evident from the materials on the record and the discussions made in the judgment of the learned trial court that accused Shesh Kumari Devi is daughter of Sahdeo Mishra. Sahdeo Mishra had no male child and the prosecution witnesses have stated that there is no partition of the agricultural land and house among the co-sharers. The accused persons are Shesh Kumari Devi, her husband, *bhainsur* and her two sons. The Investigating Officer (PW-7) has stated that in course of investigation, he came to know that the parties had dispute over the partition of land. The occurrence is said to have taken place on 11.03.2006 when Lalan Mishra (PW-6) had gone to village



Manjharia with Shiv Kumar Pandey who happens to be elder father of Satyendra Pandey to meet Shri Niwas Upadhyay in connection with the marriage of his daughter. It is the case of the prosecution that Satyendra Pandey had come to the residence of Lalan Mishra for 2-3 days back. The Investigating Officer has not investigated Shri Niwas Upadhyay and he has not been examined in course of trial but the learned trial court has found that in the cross-examination the defense has not taken any contradiction on this point.

18. The learned trial court has, however, found that the present case has been lodged against five accused persons but the prosecution had not proved the guilt of accused nos. 2 to 5. Lalan Mishra had accepted that accused Shiv Kumar Pandey had gone with him to village Manjharia in connection with the marriage of his daughter and on the date of occurrence when they returned Buxar then they came to know about the occurrence.

19. We agree with the finding of learned trial court that whatever have been alleged by the prosecution against accused nos.2 to 5 (Respondent Nos. 2 to 5) are all post occurrence allegations which do not prove involvement of accused nos. 2 to 5 in the kidnapping or criminal conspiracy to kidnap the victim boy. All the prosecution witnesses have stated about the stay of



Satyendra Pandey for 3-4 days prior to the occurrence and they have made this statement on the basis of the information furnished to them by Lalan Mishra (PW-6). So far as Respondent Nos. 2 to 5 are concerned, there is no allegation that they had in way associated with Satyendra Pandey in the kidnapping of the victim boy. The only circumstance shown against accused Brij Bihar Pandey is that on the asking of Satyendra Pandey a sum of Rs. 25,000/- was given in hand of his father Brij Bihari Pandey. There is no evidence that Brij Bihari Pandey had asked for money. There is absolutely no evidence suggesting involvement of respondent nos. 2 to 5 in kidnapping of the victim boy and demand of ransom. In paragraph '29' of his deposition Lalan Mishra (PW-6) has stated that he did not remember to have told police that Satyendra had asked to give Rs. 25,000/- to his father. The Investigating Officer (PW-7) has stated in his examination-in-chief that he had not enquired about this in village Parnampur. PW-7 has stated in his cross-examination that Akshay Kumar Dubey (PW-1) had not stated that when money was being given to Satyendra he told to give money to his father. PW-1 had not stated that Brij Bihari Pandey had received Rs. 25,000/- and said that the boy will come back within three days. PW-7 has contradicted Jitendra Mishra (PW-2), Arvind Kumar Chaubey (PW-4), Ravindra Mishra (PW-5)



and Lalan Mishra (PW-6). In our opinion, neither charge under Section 364 A IPC nor under Section 120 B IPC are made out against these accused persons. Name of Daya Shankar Pandey (accused no. 4) was not there in the FIR and his name has been brought in this case after one month on 12.04.2006 on the basis of an application submitted by the informant to the Investigating Officer.

20. We have noticed the testimony of the Investigating Officer (PW-7) who has contradicted the prosecution witnesses on material aspects but at this stage we are not going into the threadbare discussions and examination of the evidence of PW-7 for the reason that the appeal preferred by the convict Satyendra Pandey is still pending in this Court.

21. In the light of the discussions made hereinabove, we do not find any perversity in the judgment of the learned trial court acquitting accused nos. 2 to 5 in this case.

22. In result, this appeal has no merit. It is dismissed.

(Rajeev Ranjan Prasad, J)

(G. Anupama Chakravarthy, J)

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