

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.195 of 2006

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WAKIL MIAN, son of Ali Hassan Mian, Resident of Village Kumhiya, P.S.-
Bagaha, Distt. West Champaran.

... .. Appellant/s

Versus

STATE OF BIHAR

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Anand Kishore Chaudhary, Adv.
For the Respondent/s : Mr. A.M.P. Mehta, APP

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CORAM: HONOURABLE MR. JUSTICE SUNIL KUMAR PANWAR
CAV JUDGMENT

Date : 15-05-2024

Heard Mr. Anand Kishore Chaudhary, learned
counsel appearing for the appellant as well as Mr. A.M.P.
Mehta, learned Additional Public Prosecutor for the State.

2. This appeal has been preferred by the appellant
challenging the judgment of conviction and order of
sentence dated 27th day of January, 2006 passed by learned
Additional Sessions Judge, Bagaha, West Champaran in S.
Tr. No. 117 of 2000, whereby and whereunder appellant has
been convicted for the offence punishable under Section
364A/34 of the Indian Penal Code. He is sentenced to
undergo rigorous imprisonment for ten years.

3. It would be proper to mention here that during
trial, accused Dinesh Patel had died on 13.5.2021. In such



circumstances, Cri. Appeal No. 237 of 2006, in which he was the sole appellant, stands abated under the provisions of Section 394 Cr.P.C..

3. On the basis of Fardbeyan of informant, namely, Sheela Dubey (Mother of the victim boy) FIR being Bagaha P.S. Case No. 370 of 1998 was registered against accused Dinesh Patel (since died), who was tutor of her 7 year old son, namely, Nirvikar Dubey (victim) and two others. On 17.11.1998, he came to give tuition to the victim boy. After taking tuition, her son was arranging the tuition materials. In the meantime, two accused persons by covering their faces, entered into her house and kidnapped her son, to which informant protested but they fled away with the victim boy after dashing her down. On hulla being raised by the informant, her mother and people of nearby locality came there and tried to locate her son but could not trace him out. Dinesh Patel (home tutor) had not come to her house to know the whereabouts of the informant's son. Informant raised suspicion of involvement of accused Dinesh Patel in kidnapping of her son in connivance with other accused persons. On next day i.e. 18.11.1998 FIR



was registered.

4. After completing the investigation, Investigating Officer has submitted chargesheet against the appellant and others under Sections 364A and 120B of the Indian penal Code and thereafter learned A.C.J.M., Bagaha took cognizance. Thereafter, the case was committed to the court of Sessions for trial and disposal.

6. Charges were framed u/s 364A and 120(B) of the Indian Penal Code. Trial court has explained the charges to the accused/appellant to which he pleaded not guilty and claimed to be tried.

7. To substantiate the charges leveled against the accused/appellant, altogether six witness were examined by the prosecution. P.W.-1 Anil Mishra, P.W.-2 Shailesh Choubey and P.W.-3 Nandlal Choudhary were declared hostile by the prosecution.

8. P.W.-4 Manna Devi, is the mother of the informant and she made allegation of kidnapping of her grandson in paragraph nos. 1, 2 and 3 of her deposition only against accused Dinesh Patel and she only suspects the hands of this appellant in kidnapping. In para-4 of her



examination-in-chief she stated that after eight days of occurrence, this appellant with two other accused, namely Kailash Choudhary and Prahlad Yadav came to her and told to arrange money. She sold out her land and arranged Rs. 80,000/-. She went away with them to pay the ransom and after payment, her grandson was released by the miscreants then she returned back to home with the victim boy. Her grandson narrated the entire story to her and disclosed that this appellant along with others under a conspiracy kidnapped him.

12. P.W.-5 Sheela Dubey (informant and mother of the victim boy) is the eye witness of the occurrence. In para-1 of her evidence she stated that she could not identify both the accused persons, who have kidnapped her son from her house. In para-3 she deposed that her mother brought her son after paying Rs. 80,000/-. In para-4 she stated that her mother P.W.-4 did not disclose her that to whom she had given the ransom amount. After release, her son (victim boy) also did not disclose the name of kidnappers. She was declared hostile by the prosecution, when she did not express her suspicion regarding involvement of the accused.



P.W.-6 Yogendra Paswan is the investigating officer of this case. He proved his writing on the fardbeyan which is ext.-2. He took up the investigation, inspection of place of occurrence and recorded the statements of the informant and local available witnesses. In para-6 of his evidence, he has corroborated that P.W.-4 Manna Devi had reported him that she went with the appellant and two other accused persons, namely, Kailash Chaudhary and Prahalad Yadav to give the ransom amount of Rs. 80,000/- to the kidnappers.

16. Learned counsel appearing on behalf of the appellant has submitted that entire proceeding leading to present appeal conducted by the trial court is without jurisdiction and trial court has completely failed to appreciate the entire evidence made by the prosecution. P.W. -4 and P.W. 5 are said to be the eye witness of the occurrence, but they did not suspect about involvement of this appellant in kidnapping of the victim boy. The victim boy recovered but did not disclose the name of the appellant. No evidence has come on record in respect of taking or giving the ransom amount. Test Identification



Parade was not held for identification of the accused. No case is made out and proved against the appellant for the offence punishable under Section 364A of the IPC because the ingredients of Section 364A of the IPC is not fulfilled. Victim boy, who is a material witness, was not examined by the prosecution. After his recovery, he has not stated the name of any of the accused persons. Moreover, appellant remained in custody for more than four years. The order passed by learned trial court is bad, illegal and perverse in the eye of law and as such, judgment of conviction and order of sentence is fit to be set aside.

17. Learned APP appearing for the state argued that impugned judgment in question is based on cogent and consistent evidence. From the evidence of P.W. 4 it is clear that victim boy was kidnapped by the accused persons under a conspiracy in which this appellant was also involved. P.W.-4 had paid ransom demand of Rs. 80,000/- which was demanded after eight days of the occurrence by the appellant and three other accused persons and they also proceeded with her for payment of ransom demand. The defense failed to discredit the evidence of the prosecution witnesses. He



further submitted that the prosecution has been able to prove its case beyond all reasonable doubts, and therefore, learned trial court has rightly convicted the appellant by relying upon the evidence brought on record by the prosecution during trial. It has been contended that minor contradictions and variations in the testimony of the witnesses cannot be a ground to discard their evidence as a whole. Therefore, the judgment and order assailed in this appeal requires no interference and appeal is liable to be dismissed.

18. I have gone through the entire prosecution evidence and exhibits which are available on record. It is evident that P.W.-4 and P.W.- 5 are interested witnesses as they are grandmother and mother (informant) of the victim boy. P.W. 5 is informant but turned hostile by the prosecution. P.W.-4 (grand mother of the victim boy) has brought the victim boy from the clutches of the miscreants after paying the ransom amount of Rs. 80,000/- but she has not disclosed the name of the miscreant to whom she had handed over the money, so her evidence is not credible. Victim boy is a prime and star witness but he was not



examined by the prosecution. In respect of demand of ransom, no telephonic call or documentary evidence is brought on record to support the prosecution story. It is to be noted that no one is the eye witness of the occurrence, save and except informant, who turned hostile by the prosecution. Investigating Officer of the case was examined by the prosecution, but manner of occurrence could not be proved by the prosecution as no any witness, except P.W.-4 and P.W.-5 who are family members of the victim, have seen that the victim boy was taken away by this appellant. In such situation, benefits of doubt goes in favour of the appellant. The learned trial Court's findings lack of material evidences, reasoning and merit. Therefore, the impugned judgment of conviction and order of sentence is fit to be set aside.

19. In light of the above discussions and considering the facts, evidence led by prosecution and circumstances of the case as well as prosecution failed to prove the charges levelled against the convict/appellant beyond reasonable doubts. Appellant is entitled to get the benefits of doubt. The impugned judgment of conviction



and order of sentence is hereby quashed and set aside.

20. The appellant is acquitted by giving him the benefits of doubt. Since the appellant is on bail, he is discharged from the liabilities of the bail bonds.

21. Accordingly, this appeal is hereby allowed.

(Sunil Kumar Panwar, J)

sushma/-

AFR/NAFR	NAFR
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