

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.144 of 2015

Arising Out of PS. Case No.-46 Year-2009 Thana- THAKRAHA District- West Champaran

Tribhuwan Mahto, son of Late Sunar Mahto, Resident of Village - Puraina,
P.S. - Manjhagarh, District - Gopalganj.

... .. Appellant

Versus

The State of Bihar

... .. Opposite Party

Appearance :

For the Appellant : Mr. Alok Kr Alok, Advocate

For the State : Mr. Abhimanyu Sharma, Addl.P.P.

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

and

HONOURABLE MR. JUSTICE SHAILENDRA SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 13-02-2024

Heard learned counsel for the appellant and Mr. Abhimanyu Sharma, learned Additional Public Prosecutor.

2. The appellant in the present case is seeking setting aside of the judgment dated 17.06.2014 passed by learned Adhoc, Additional Sessions Judge-III, Bagha (hereinafter referred to as 'the learned court' or 'the learned trial court') in Sessions Trial No. 85 of 2012/SL No. 491 of 2013 (State versus Tribhuwan Mahto) by which the learned court has been pleased to hold and declare that the appellant has committed offence punishable under Section 364 of the Indian Penal Code (hereinafter referred to as the 'IPC') and he is guilty of the said offence. Upon setting aside of the judgment of the learned trial court, the appellant prays for setting



aside of the order dated 18.06.2014 by which the learned trial court has awarded a sentence of life imprisonment and a fine of Rs.10,000/- to the appellant and in default of payment of fine, the appellant has been ordered to undergo rigorous imprisonment of six months for the offence committed by him punishable under Section 364 IPC.

Prosecution Story

3. As per the prosecution story, the eldest son of the informant was working in an orchestra party of the appellant. The appellant used to visit her house. It is alleged that on 15.06.2009 at about 6:00 PM, the appellant came at the informant's house and asked the whereabouts of her son, namely, Mantosh and said that her son had brought his mobile. It is further alleged that due to appellant's regular visits at her house, the kids of the family had become familiar with him and on the said date, the appellant took informant's youngest son, Vipin Kumar to get him biscuits and sweets. It is alleged that after much delay when her son did not return, she started searching for him and came to know from the shopkeepers that the appellant has taken away her son towards Tamkhni Road on his motorcycle. In course of search, the informant went to the *sasural* of the appellant where the wife of the appellant told the informant that after she returns the mobile



phone of her husband then her son will be returned. The informant returned the mobile in presence of *Mukhiya* and assurance was given to her that her son will be returned but her son was not returned.

4. On the basis of the allegations made by the informant (PW-7), a first information report giving rise to Thakaraha P.S. Case No. 46 of 2009 was registered under Section 364 IPC against the appellant. The Officer Incharge of the police station, namely, Arun Kumar (not examined) took the charge of investigation of the case. The appellant was earlier arrested in connection with Mohmmmedpur (Gopalganj) P.S. Case No. 21 of 2007 and was in jail. He was later remanded in this case on 10.10.2011 by virtue of the order passed by learned Additional Chief Judicial Magistrate, Bagha issuing production warrant to the Jail Superintendent, Gopalganj.

5. Upon completion of investigation, a chargesheet was filed under Sections 364 and 365 IPC against the appellant in the court of learned Additional Chief Judicial Magistrate, Bagha on 05.01.2012. The case was committed to the court of Sessions on 25.01.2012 whereafter it was transferred to the court of learned Adhoc Additional Sessions Judge-III, Bagha.



6. On 07.08.2012, charges were framed under Sections 364 and 365 IPC against the appellant which were read over and explained to the appellant in Hindi. The appellant pleaded not guilty and claimed to be tried.

7. On behalf of the prosecution, altogether eight witnesses were examined. The defence did not examine any witness. Since PW-1, namely, Awadeshh Kumar Madhesiya and PW-2, Suresh Chaudhary were not cross-examined by learned counsel for the defence and at the same time, no Amicus Curiae was appointed by the learned trial court, in ultimate analysis, the learned trial court thought it just and proper to expunge the evidence of PW-1 and PW-2.

8. PW-3 Munni Lal, PW-4 Pankaj Sah and PW-5 Suresh Sah are the shopkeepers. They are independent witnesses. These witnesses have supported the prosecution case. PW-3 has stated that when he was sitting at his door, at about 06:00 P.M., he had seen the appellant taking away the victim boy on his motorcycle. This witness has been cross-examined but no contradiction or inconsistency could be taken out in course of his cross-examination.

9. PW-4, Pankaj Sah is running a *kirana* shop. He has also stated that he had seen the appellant with the three and half



years old son of the informant. He had brought the victim boy to the shop of PW-4 and had given him one biscuit of Rs.1/- whereafter the boy was taken to the tea shop. In the evening, he came to know that the boy was missing. This witness identified the appellant in the dock. In his cross-examination, he has stated that the appellant used to come to the house of his co-villager Mantosh and he used to leave the house after staying for a day. Mantosh is the son of the informant, he was working in the Orchestra party of the appellant.

10. PW-5 is another independent witness who has stated that the appellant had brought the victim boy to his tea shop where he had purchased *pakodi* for the boy and then took him away on his motorcycle.

11. The informant (PW-7) is the mother of the victim boy and has supported her case and withstood the test of cross-examination. From the pattern of the cross-examination of the informant, it would appear that the defence set up a case that Mantosh was not the son of the informant rather he had born from the wedlock of the Bikhari Chaudhary with his first wife and Mantosh was involved in commission of theft. The informant denied the suggestion that she had falsely implicated the appellant with a concocted story.



12. PW-8, Subh Narayan Prasad Yadav is the investigating Officer of the case who assumed investigation of the case on 24.03.2011. He had taken the appellant on remand and collected materials in course of investigation. This witness has proved the formal FIR which has been prepared by the then Sub-Inspector of Police Arun Kumar Singh. This witness has identified his writing and signature. The formal FIR got marked as Exhibit '3'. PW-8 also proved the confessional statement of the appellant as Exhibit '4'. The learned trial court has, however, not considered the confessional statement of the appellant as it was extracted in police custody.

13. In view of the materials mentioned above, the learned trial court convicted the sole accused-appellant and passed the order of sentence as stated above.

Submissions on behalf of the Appellant

14. Learned counsel for the appellant submits that in paragraph '4' of his cross-examination PW-3 has stated that he had not told the police that at the time of occurrence, he was sitting at his door. Learned counsel submits that from this part of the cross-examination of PW-3, it would appear that he is not an eye witness.



15. Learned counsel further submits that PW-4 and PW-5 are also not eye witnesses to the case as they have stated that they heard about the missing of the boy. In paragraph '4' of his cross-examination, PW-5 has stated that he heard that the appellant had escaped with the son of the informant but he had not seen them going.

16. Learned counsel further submits that PW-7 is the informant herself who is the mother of the victim boy and in her examination-in-chief, she has stated that in course of search of boy, when she went to the shop of Suresh Sah (PW-5), this Suresh Sah said her that the appellant had purchased *pakodi* from his shop and biscuit from the shop of Pankaj Sah (PW-4) and had gone along with the son of the informant, by a motorcycle. It is submitted that the I.O. of this case Arun Kumar Singh has not been examined which has caused prejudice to the appellant.

17. Learned counsel for the appellant further submits that in his statement under Section 313 Cr.P.C. which was recorded on 25.05.2014, the appellant had denied the evidences adduced against him and claimed that he was innocent. It is his submission that from the materials available on the record, it would appear that there was no enmity in between the appellant and the informant, but the villagers had objection on the visit of the



appellant in the house of the informant. It is his submission that the prosecution has failed to prove that the appellant had kidnapped the victim boy and in absence of proof of this fact, the offence under Section 364 of IPC would not be made out.

Submissions on behalf of State

18. Mr. Abhimanyu Sharma, learned Addl. PP for the State has taken this Court through the evidences available on the record. It is stated that PWs- 3, 4 and 5 are independent witnesses who are consistent in their statements. So far as paragraph '4' of the cross-examination of the PW-3 is concerned, it is stated that on perusal thereof it would appear that this witness (PW-3) was suggested that he had stated to the Investigating Officer that when he was sitting at his door, the victim boy was playing beside the house of the informant and from there, the appellant had taken him away on his motorcycle. In fact, this suggestion of the defence was denied by PW-3, therefore, it would not be correct on the part of the defence to say that this witness has denied his presence at the door.

19. Learned Addl. PP further submits that the informant (PW-7) and the appellant were well known to each other because one of the sons of the informant was working in the Orchestra Party of the appellant. From the evidences available on the



record, it would appear that on the alleged date of occurrence, this appellant had visited the house of the informant and complained that her son Mantosh had brought his mobile. Since the little children of the informant had also mixed up with the appellant because of the prior acquaintance, taking advantage of the same, the appellant took away the youngest son of the informant who was aged about three years on the pretext of giving him biscuits and sweets but when after a substantial time the appellant did not return then the informant went in search of the victim boy. In course of search, she met PWs- 3, 4 and 5 who had stated that the appellant had come to their shops with the victim boy.

20. Learned Addl.PP, therefore, submits that all the prosecution witnesses are consistent and learned trial court has rightly placed reliance upon the evidences brought by the prosecution.

21. It is further submitted that in his statement under Section 313 Cr.P.C. also the appellant did not come forward to say the truth. His attention was drawn towards the materials brought by the prosecution in course of trial. The appellant did not deny his visit to the house of the informant and no further explanation was given. It is, thus, submitted that no fault may be found with judgment of the learned trial court.



Consideration

22. This Court has heard learned counsel for the appellant and learned Additional Public Prosecutor for the State at length and also perused the records. For brevity sake, the contents of the evidences which have been noted hereinabove are not being repeated. A perusal of the written complaint (Ext.-1) submitted by the informant (PW-7) would show that right from the beginning, it was the case of the informant that on 15.06.2009, this appellant had visited her house at about 6.00 PM (evening) and he enquired about her eldest son Mantosh. Since Mantosh was not present in the house, she told that she was not aware of his whereabouts. On this, the appellant told her that Mantosh had brought his mobile, on this, the informant told him that when Mantosh will come then she will enquire from him about this. Thereafter the appellant left her house with the youngest son aged about three years on the pretext of giving him biscuits and sweets. The defence does not deny that the appellant was visiting the house of the informant and the children of the informant had also mixed up with him.

23. On 15.06.2009, the appellant brought the youngest son of the informant to the shop of P.Ws 3, 4 and 5. P.Ws 3, 4 and 5 are the shop owners who have deposed that the appellant had come to their shop in the evening, got purchased biscuit and



pakauri for the boy and then made him to sit on his motorcycle whereafter he took away the boy. The prosecution witness (PW-4) has deposed that he was knowing the appellant because he was visiting the house of the informant, he was staying there for some time. This Court finds no reason as to why the evidence of P.Ws 3, 4 and 5 be not relied upon.

24. The informant (PW-7) is consistent in her deposition in course of trial. She has narrated the whole occurrence without any deviation from her first version in her written complaint. In course of her cross-examination only in a completely vague manner, a suggestion was thrown that she has falsely implicated the appellant but no fact of significance has been suggested to this witness to draw any inconsistency or contradiction in her statement.

25. This Court further finds that during his statement under Section 313 Cr.P.C., the appellant was informed that the prosecution had brought evidences against him that on 15.06.2009, he had gone to the house of the informant (PW-7) and in the name of giving biscuits and sweets to the youngest son of the informant, who was aged about three years, he had taken away the said boy to a secret place with an intention to kill him and the said boy is still not traceable. To this, the appellant replied in negative and said it



is wrong. He has not denied his visit to the house of the informant rather while answering the question no.3 in his statement under Section 313 Cr.P.C., he has admitted that on two occasions prior to the alleged date of occurrence, he had visited the house of the informant.

26. To this Court, it appears that the prosecution witnesses are quite consistent and reliable. The prosecution has been able to prove it's case beyond all reasonable doubts. The learned trial court has not committed any error, hence, no interference is required with the impugned judgment and order.

27. This appeal is dismissed.

28. Interlocutory application, if any, shall also stand dismissed.

(Rajeev Ranjan Prasad, J)

(Shailendra Singh, J)

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