

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.503 of 2006

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Bijendra Sharma S/o Laxmi Sharma, Resident of Village- Tola Rajgaon, Post-
Koriyapatti, P.S. Jadiya, District-Supaul

... .. Appellant/s

Versus

State Of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Vivek Kumar Singh, Amicus Curiae
For the Respondent/s : Ms. Anita Kumari Singh, APP

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CORAM: HONOURABLE MR. JUSTICE SUNIL KUMAR PANWAR
ORAL JUDGMENT

Date : 19-02-2024

Heard Mr. Vivek Kumar Singh, learned Amicus
curiae on behalf of the appellant and Ms. Anita Kumar
Singh, learned APP appearing for the state.

2. The present jail appeal preferred by the
convict/ appellant Bijendra Sharma against judgment of
conviction dt. 11.5.2006 and order of sentence dt.
12.5.2006 rendered by court of learned Additional Sessions
Judge, Fast Track Court no. 1, Purnea in Sessions Trial No.
396 of 2005, whereby and whereunder appellant/convict
Bijendra Sharma convicted u/s 367 of the Indian Penal
Code and awarded sentence to undergo rigorous
imprisonment for 10 years for the offence punishable under
Section 367 of the Indian Penal Code.



3. The prosecution case, according to the F.I.R. is that on 27.1.2005 the appellant Bijendra Sharma kidnapped Durgesh Kumar aged about six years, *bhagina* of the informant Shiv Kumar Singh, when he was in school. While the victim Durgesh Kumar was being searched by the informant and his family members, one Suraj Sahni (PW-1) told the informant that on 27.1.2005, he saw his *bhagina*/victim with accused Bijendra Sharma (appellant) who was working as carpenter in Banmankhi.

4. On the basis of aforesaid written application of the informant, police registered a formal FIR on 05.02.2005 as Banmankhi P.S. Case No. 24 of 2005 for the offences under Sections 365 & 367 of the Indian Penal Code. During investigation, the appellant Bijendra Sharma was caught by Madhepura police with the kidnapped child. After completion of investigation, investigating officer submitted charge sheet against the appellant/convict Bijendra Sharma. On the basis of charge sheet and materials available on record, cognizance for the offence was taken and the case was committed to the court of Sessions for its disposal.



5. After commitment, the sole accused was charged u/s 365/367 of the Indian Penal Code. The learned Trial Court explained the charges to the appellant/accused, which was denied by the appellant and claimed to be tried. The defense of the appellant/convict totally denied the alleged occurrence and pleaded for his innocence.

6. “The point to be considered in this appeal before this Court is whether the prosecution has been able to bring home guilt the accused person beyond the shadow of reasonable doubt or not.”

7. To establish its case before the learned trial court, altogether eight witnesses had been examined on behalf of the prosecution, namely, PW-1 Suraj Sahni, PW-2 Maya Nand Yadav, PW-3 Luxman Sah, PW-4 Surendra Mukhiya, PW-5 Shiv Nandan Singh (father of the informant), PW-6 Durgesh Kumar (Victim), PW-7 Shiv Kumar Singh (informant) and PW-8 is Bindhyachal Prasad, the Investigation Officer.

8. PW-1 Suraj Sahni, PW-2 Maya Nand Yadav, PW-3 Laxman Sah and PW-4 Surendra Mukhiya have been examined, who claimed to be eye witnesses and deposed in



their evidence that on the alleged date of occurrence i.e. 27.1.2005 at noon, they saw the appellant/convict Bijendra Sharma taking away the victim Durgesh Kumar on cycle. Thereafter, they informed the informant about alleged incident.

9. P.W.-6 Durgesh Kumar, the victim himself disposed in his evidence that on the date of occurrence about 1:30 PM, while he was returning from his school, he met with the appellant Bijendra Sharma, who told him that his *mama* was calling him. Bijendra Sharma lifted him and went towards west and in the evening, they reached in a village where they lived in night. The victim further deposed that on the next day, they reached at Madhepura from where the appellant took him to his native village and kept there for 7-8 days. Further, the appellant took the victim to Madhepura en-route to Delhi but when the appellant found no communication for Delhi, he took the victim to a saloon, where he was caught by the police.

10. PW-7 is the informant and PW-5 is grandfather (*nana*) of the victim Durgesh Kumar have also examined who deposed in their evidence that they were informed about the alleged occurrence by witnesses Suraj



Sahni, Maya Nanda Yadav, Surendra Mukhiya and Laxman Sah. P.W.-5 & P.W.-7, both are not eye witnesses. They are only hearsay witnesses.

11. Mr. Vivek Kumar Singh, learned counsel is appointed as *Amicus Curiae* for assisting the Court in this appeal who submitted that the date of occurrence is said to be 27.01.2005 and the witnesses (PW-1 to PW-4) had informed to the informant about the occurrence on that very day but the informant gave information to the police station on 29.01.2005 and filed a written application on 05.02.2005. After that, the case was registered on 05.02.2005 after delay of seven days. The appellant/convict is said to have been apprehended with the victim Durgesh Kumar but Investigation Officer of this case was examined as PW-8 in his cross examination, who deposed in para-5 of his evidence that a *sanha* No. 88 dated 5.2.2005 was registered in station diary still, he had no knowledge regarding in whose presence, the kidnapped child Durgesh Kumar was recovered.

12. Learned APP appearing for the state argued that the judgment of the conviction and the order of sentence is fit and proper and there is no need for interference in it. The judgment was based on consistent and cogent evidence. The



defense failed to discredit the evidence of the prosecution witnesses.

13. After scrutinizing the evidence which are available on record, it is elicited that the victim Durgesh Kumar is minor boy, aged about 6/7 years at the time of occurrence who gave evidence in respect of manner of the occurrence which appears to be cogent and consistent. The prosecution witnesses have been cross-examined at length but barring a few minor contradictions, nothing could be surfaced to discredit the testimony of prosecution witnesses.

14. After gone through the entire impugned judgment of conviction, I found there is no infirmity, inconsistency or illegality in the same. The impugned judgment of conviction is based on cogent and consistent evidence which are available on record and the same is fit and proper. There is no need of interference in the said judgment. The conviction of the appellant u/s 367 is hereby confirmed.

15. I have also gone through in respect of order of sentence which was passed by the trial court, the case is year of 2005 and the appellant had faced ordeal of trial since then. The appeal relates to year of 2006. The order for releasing the appellant on bail had been passed on 4.12.2008. In this case,



the appellant remained in jail for more than three years.

16. Considering the period of custody as well as the ordeal of trial faced by the appellant, this Court thinks fit that the appellant is hereby sentenced to undergo rigorous imprisonment for the period during which he remained in jail as a whole in connection with this case.

17. With this modification in the order of the sentence, this appeal is, hereby, dismissed.

18. Mr. Vivek Kumar Singh, learned *Amicus Curiae* was appointed to represent the appellant/accused. I put on record the words of appreciation for able assistance rendered by him in arriving this Court at the proper conclusion in deciding the instant appeal. The Patna High Court, Legal Services Committee is, hereby, directed to pay Rs. 5,000/- (rupees five thousand only) to Mr. Vivek Kumar Singh.

(Sunil Kumar Panwar, J)

Amandeep/-

AFR/NAFR	NAFR
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