

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.512 of 2006

1. Birendra Singh, son of Parmeshwar Singh
2. Parmeshwar Singh, son of Late Jagdeo Singh
Both resident of village Murgichak, P.S. Ghosi, Distt. Jehanabad
3. Awadhesh Singh, son of Jungi Singh, resident of village Jhandu Bigha,
P.S. Silao, District-Nalanda
4. Ram Murti Singh, son of Budhan Singh, resident of village Harwans Bigha,
P.S. Islampur, Distt- jehanabad
5. Prasidh Singh, son of Khelawan Singh, resident of village Nanok, P.S.
Buniyadganj (Muffail), Distt. Gaya. **Appellant/s**
Versus
STATE OF BIHAR **Respondent/s**

Appearance :

For the Appellant/s : Mr. Vipul Sinha, (Amicus Curiae)
For the Respondent/s : Mrs. Anita Kumari Singh, APP

CORAM: HONOURABLE MR. JUSTICE SUNIL KUMAR PANWAR
ORAL JUDGMENT

Date : 15-03-2024

Heard Mr. Vipul Sinha, learned Amicus Curiae
appearing for the appellants as well as Ms. Anita Kumari
Singh, learned Additional Public Prosecutor for the State.

2. This appeal has been preferred by the
appellants challenging the judgment of conviction and order
order of sentence dated 24th day of June, 2006 and 27th day
of June, 2007 respectively passed by learned Additional
District & Sessions Judge, F.T.C.-3, Gaya in Sessions Trial
No. 69 of 2006 arising out of Civil Lines P.S. Case no. 168
of 1989 whereby and whereunder all the appellants have
been convicted for the offence punishable under Sections
363 and 420 of the Indian Penal Code. They are sentenced



to undergo rigorous imprisonment for seven years and to pay a fine of Rs. 3,000/- under Section 363 IPC and in default of payment of fine amount, further to undergo S.I. for one year. In respect of offence u/s 420 IPC, all the convicts/appellants are sentenced to undergo Rigorous Imprisonment for the period of two years.

3. Complainant Gopal Singh had filed complaint petition on 28.6.1989 in the court of learned C.J.M., Gaya i.e. Complaint Case No. 533 of 1989 and the same was referred to Civil Lines police station it was registered as Civil Lines P.S. Case No. 168 of 1989.

4. Complainant Gopal Singh had got married his daughter, namely, Chanda Kumari to Satendra Singh s/o Parmeshwar Singh in the month of June 1988. Complainant is samadhi of convict/appellant no. 2. After marriage, accused persons started demanding money from Chanda Kumari and complainant has fulfilled their demand several times.

5. Recapitulating the prosecution case, in short, is that on 23.6.1989, samadhi of the complainant, namely, Parmeshwar Singh came to his house with other accused



persons, namely, Birendra Singh, Awadhesh Singh, Ram Murti Singh and Parsidh Singh and told to Kailashi Devi, (wife of the complainant) that her daughter is admitted in A.N.M.C.H. Gaya in serious condition and he asked for Rs. 1000/- for medical expences. The accused persons also took away complainant's son, namely, Anil Singh, 12 years old, for nursing Chanda Devi. When complainant returned to his house, his wife Kailashi Devi, narrated the incident to him. Thereafter Gopal Singh went to ANMCH, Gaya to meet his daughter Chanda Devi but neither he found his daughter nor his son there. On next day, Gopal Singh went to village Murgichak, matrimonial house of his daughter, where accused persons demanded Rs. 20,000/- as dowry with a threatening that his son and daughter would be killed if their demands were not fulfilled.

6. After completing the investigation, Investigating Officer has submitted chargesheet against the appellants under Sections 363 and 386/34 of the Indian penal Code and thereafter cognizance was taken. During course of trial learned Magistrate found case under Section 364 Indian Penal Code and the case was committed to the



court of Sessions for trial and disposal.

7. Charges were framed u/s 364, 387 and 420 of the I.P.C. against the appellants. Trial court explained the charges to the accused persons to which they pleaded not guilty and claimed to be tried.

8. To substantiate the charges leveled against the accused persons, altogether six witness were examined by the prosecution and all of them were highly interested witnesses being relatives and family members of the complainant. P.W.-1, Jagdish Singh (elder son of the complainant), P.W.-2 Gopal Singh (complainant), P.W.-3 Kailashi Devi (wife of complainant) P.W.-4 (Gajadhar Lal Pandey and P.W.-5 Mohan Lal Manto (family friends of complainant), P.W.-6 Anil Kumar (victim son of complainant). Investigating Officer was not examined by the prosecution.

9. P.W.-1 is the eldest son of the complaint and in his deposition he has stated that he was at his home when accused persons came to his house and took Rs. 1000/- from his mother and his brother Anil Singh to look after his sister. At evening his mother narrated the story to his father



when he returned to his house. Thereafter, he went to hospital Gaya where he did not find his daughter or son. On next day his father went to Murgiachak, matrimonial village of his daughter, where accused person did not allow him to meet with his daughter or son and demanded Rs. 20,000/-. They also threatened him that if demands were not fulfilled, they will kill his daughter and son. Thereafter, his mother went to Murgiachak, she meet with Chanda Devi and found several injuries mark over her body. She did not find her son Anil Singh there. In para-6 of his deposition, he stated that after 2-4 months of the occurrence, they killed her sister.

10. P.W.-2 Gopal Singh is complainant he stated in his deposition that Parmeshwar Singh is his samadhi, Birendar Singh is brother of his damaad and Ram Murat Singh, Prasidh Singh and Awadhesh Singh are damaad of Parmeshwar Singh. Marriage of his daughter was done in June 1988 and after 11 months of marriage *roksadi* was performed. Thereafter, accused persons always demanded money to him to which he always fulfilled. On the alleged date of occurrence, accused persons came to his house and



told his wife that her daughter is admitted in Gaya Hospital. They took Rs. 1000/- from his wife to meet the medical expenses of his daughter and also taken away his son Anil Singh with them to look after his ill sister. Thereafter, he went to Hospital Gaya but he did not find his daughter or son. On next day he went to Murgichak but accused persons did not allow him to meet with his daughter and son. In para-7 of his examination-in-chief he has stated that after six years of occurrence, his son Anil Singh returned to his house from Hazaribag and thereafter information in respect of his returning was provided to S.D.O. Court. He is heresay witness of the occurrence.

11. P.W.-3 Kailashi Devi, wife of complainant and mother of the victim boy has stated in his deposition her daughter was married to son of Parmeshwar Singh and her parents-in-law in connivance with each other killed her daughter. On the alleged date of occurrence, accused persons came to her house and told her that her daughter is serious in Gaya Hospital. On demand, she had given Rs. 1,000/- to Birendra Singh to meet the medical expenses and they took Anil Singh with them to look after her daughter.



She narrated the story to her husband at evening. She went to Murgichak with her husband where she found her daughter Chanda, who told her that she is not knowing of whereabouts of Anil Singh. Accused persons abused Chanda in front of her and demanded Rs. 20,000/-. In para-7 of her examination-in-chief, she stated that her son Anil Singh has returned four years before. In para-4 of her deposition, she stated that she went to Murgichak where she found her daughter in injured condition. In para 15 of her cross-examination she has stated that at the time of occurrence, she was only with her son Anil Singh.

12. P.W.-4 Gajadhar Lal Pandey stated in his deposition that that Anil Singh was going with the accused persons from his village and in way he meet with Anil Singh who told him that his sister is admitted in Gaya Hospital, where he is going to look after with Rs. 1,000/-. After 3-4 days, he asked to Gopal Singh about the condition of her daughter then he told that when he went to Gaya hospital, he did not find his daughter and son there. His samadhi Parmeshwar Singh is demanding Rs. 20,000/- and threatened him that if he will not fulfill his demand, he



will kill his son and daughter both. In para-10 of his deposition he stated that after 4-5 years of occurrence, he saw Anil Singh in village.

13. P.W.-5 Makhan Lal Mahto has stated in his deposition that he had seen the occurrence, from his door that Anil Singh was going with the accused persons. In para-2 of his examination-in-chief he deposed that he came to know from Gopal Singh that his daughter is admitted in A.N.M.C.H. Gaya.

14. P.W.-6 Anil Singh, victim himself and he has stated nothing new in his deposition. He has stated that accused persons took him away on the pretext of look after his ailing sister at ANMH Hospital. They took him to village Ghosi and they keep him there for two years under fear and told him that they will demand money from his father and locked him inside a room and depute two persons to keep tight vigil upon him. After two years, they took him from Ghosi to Firojabaad and sold him in the hands of one Sardarji who was engaged in milk business. Thereafter he was taken to Gola Bazar via Kathmandu and he was there under the vigil of Rajkumar for one and half year. From



there, all the accused persons, brought him to Hazaribag and handed over to Pramod for two years. He was engaged there in a hotel as servant. From Hazaribag, he managed to escape and reached to his village and narrated the whole incident to his father. In para-4 of his deposition he came to know by his father and other family members that his sister was being killed at her matrimonial home by the accused persons. In para 9 and 10, he deposed that he was badly tortured by the persons to whom he was handed over. He was used as labour to work in field and to carry loads. He was sold three times to three different persons of different places by the accused persons. In para-16 in his cross-examination, he has stated that In Firozabad, he was kept freely without any vigil.

15. Learned counsel appearing on behalf of the appellants 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. Learned trial court completely failed that earlier total seven witnesses were examined in course of trial before the



magistrate and out of them, four witnesses were re-examined before the sessions court as P.W.-1 Jagdish Singh, P.W.-2 Gopal Singh, P.W.-3 Kailasi Devi and P.W.-4 Gajadhar Lal Panda in their statements, there are vital contradictions made in both occasions before the court in their evidence. The entire proceeding in present appeal, conducted by the learned Additional Sessions Judge, was without jurisdiction since the case was committed from the court of magistrate on the ground that the so-called abducted boy might have been killed and the charge was altered from section 363 to section 364 but the moment the court was informed that the boy was alive and has allegedly returned home as such the learned sessions court ought to have re-altered the charge under section 363 IPC. and would have sent a record to learned judicial magistrate 1st Class, but unfortunately, learned sessions court proceeded by trial of a charge for which he was having no jurisdiction making entire trial void. As such, any order passed by such void trial is nullity in the eye of law. During trial, on direction of learned judicial magistrate, daughter of complainant appeared before the court in presence of



complainant and she stated before the magistrate that she is living happily with her husband.

16. It is further submitted by learned counsel for the appellants that learned trial court completely failed to appreciate the entire evidence made by the prosecution before the magistrate as well as the sessions court. In fact victim boy Anil Singh was kept somewhere by the complainant himself and only for the purpose of harass the accused persons, implicated them in such a false case. P.W.-1 has stated in his deposition that he was present at his house at the time of occurrence but his presence is itself falsified from the evidence of P.W.-3 and P.W.-6. Statement of P.W.-2 is falsified by the statement of her daughter in the court of judicial magistrate on 18.9.1999, when she appeared and informed the court that she is living happily with her husband. Hence, entire allegation of injury caused to Chanda, her death caused by accused persons and dowry demand stood falsified and the complainant stood exposed in the court of law. But, unfortunately this aspect completely ignored and overlooked by the trial court. P.W.-3 Kailashi had taken stand that she had handed over Rs.



1000/- in the hands of appellant Birendra Singh but in para 17 of her deposition she retracts from her earlier version and stated that she had handed over money to Ram Murti Singh. Evidence of P.w.-4 and P.W.-5 is most unreliable being hearsay witnesses and their evidence can not be relied upon. Investigation Officer of this was not examined by the prosecution, making the entire case and prosecution story completely weak and as such in absence of the evidence of I.O. , the order passed by learned trial court is bad, illegal and perverse in the eye of law and as such, impugned 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. Judgment of conviction and order of sentence is fit and proper and there is no need for interference in it. 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 appellants 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, documents, and exhibits which are available on record. It is evident that prosecution witnesses are highly interested witnesses. Chanda Devi, daughter of the complainant has not made any complain in respect of torture at her matrimonial home by any one and she has stated before the court of judicial magistrate on 18.9.1989 and the same is mentioned in its order that she is living happily with her husband as such allegation of torture or demand of money stood falsified. Son of complainant, namely, Anil Singh P.W.-6 has also returned to his home himself after about 10 years. His statements are full of contradictions in respect of manner of occurrence. He was kept free at Firojabad, so he was having sufficient scope to abscond from there to his home. P.W.-3 stated in her



deposition that his elder son P.W.1 Jagdish Singh was present with her at the time of occurrence, but in her cross-examination, she herself contradicted her earlier statement denying his presence. P.W. 3 had also taken stand that she had handed over rupees one thousand in the hands of Birendra Singh but in para 17 of her deposition, she stated that she handed over money to Ram Murti Singh. In respect of time of returning of victim Anil Singh, there is major contradictions as P.W. 2 Gopal Singh, father of the victim boy in para-7 of his examination-in-chief, he has stated that his son returned after six years of the occurrence i.e in the year 1995 whereas his wife P.W.-3 stated in para 15 of her deposition that victim boy had returned 4 years before i.e. in the year 1996 and P.W.-4 in para-10 of his deposition has stated that he saw the victim boy after 4-5 year of the occurrence meaning thereby in the year 1994 -95. No one has said exact time of his returning. There is vital contradictions in the statement of P.W. 2,3 & 4 in respect of returning time of the victim boy. I.O. of the case was not examined by the prosecution, whose evidence was vital for determination of the case. In such situation, benefits of



doubt goes in favour of the appellants. The learned trial Court's findings lack material evidences, reasoning and merit. Therefore, the impugned judgment of conviction and order of sentence should be set aside. According to prosecution evidence, there are major contradictions in the evidence deposed by the prosecution witnesses in respect of time of occurrence and manner of occurrence.

19. In light of the above discussions and considering the facts and circumstances of the case as well as the ordeal of trial faced by the appellant since beginning of the case and considering that the prosecution has failed to prove the charges levelled against the convicts/appellants beyond reasonable doubts. Due to non-examination of I.O. defense has succeeded to raise the doubt in the prosecution version and the appellants are entitled to get the benefits of doubt. The impugned judgment of conviction and order of sentence is hereby set aside.

20. The appellants are acquitted by giving them the benefits of doubt and they are discharged from the liabilities of the bail bonds.

21. Accordingly, this appeal is hereby allowed.



22. Mr. Vipul Sinha, learned *Amicus Curiae* was appointed to represent the appellants/convicts. 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. 6,000/- (rupees six thousand only) to Mr. Vipul Sinha

(Sunil Kumar Panwar, J)

sushma/-

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