

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1401 of 2018**

Arising Out of PS. Case No.-12 Year-2017 Thana- MOHIUDDIN NAGAR District-
Samastipur

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Parmeshwar Dhangar Son of Late Ganga Dhangar, resident of Mohalla China
Kothi Harijan Toli Harijan Colony, Police Station Budha Colony, District-
Patna.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 1406 of 2018

Arising Out of PS. Case No.-12 Year-2017 Thana- MOHIUDDIN NAGAR District-
Samastipur

=====

Sonu Singh @ Sonu Kumar Singh, Son of Arun Kumar Singh, residnet of
village -Chamtha Barkut, P.S. - Bachhwara, District – Begusarai.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

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Appearance :

(In CRIMINAL APPEAL (DB) No. 1401 of 2018)

For the Appellant/s : Mr.Ganesh Prasad Yadav

For the Respondent/s : Mr.Sri Dilip Kumar Sinha

(In CRIMINAL APPEAL (DB) No. 1406 of 2018)

For the Appellant/s : Mr.Prabhat Ranjan Singh

For the Respondent/s : Mr.Sri Abhimanyu Sharma

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE JITENDRA KUMAR

ORAL JUDGMENT



(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 21-08-2024

1. Both the appeals have been heard together and are being disposed of by this common judgment.
2. We have heard Mr. Ganesh Prasad Yadav and Mr. Harsh Singh, the learned Advocates for the two appellants.
3. Both the appellants have been convicted under Section 364(A)/34 of the Indian Penal Code vide judgment dated 27.09.2018 passed by the Fast Track Court No.1, Samastipur in Sessions Trial No 466 of 2017/ 45/2018 arising out of Mohiuddinnagar P.S. Case No. 12 of 2017. By order dated 28.09.2018, they have been sentenced to undergo imprisonment for life along with a fine of Rs.10,000/- and in default of payment of such fine, to suffer further rigorous imprisonment for one year for the offence under Section 364(A)/34 of the Indian Penal Code.
4. Naresh Kumar Choudhary (PW-1) was



abducted for a while on 24.01.2017. He was recovered at the instance of police on the same day by around 6:00 P.M. The appellants were arrested on the spot.

5. There were two others also who were named in the F.I.R. but they have been acquitted for paucity of evidence. We have no idea about two others suspects *viz.*, Raja Kumar and Hareram Chaudhary. The learned Advocates appearing for the appellants have also not informed us anything about the afore-noted two other suspects of the crime.

6. The F.I.R. was registered on the basis of *fardbeyan* of Naresh Kumar Chaudhary as noted above, who has been examined as PW-1 at the Trial. He claims to be an employee of Sahara India and on 24.01.2017, while he was coming on his motorcycle to his home from his office, a Bolero vehicle overtook the motorcycle and forcibly made him sit in the vehicle. The motorcycle of PW-1 was left behind. The four abductors including the driver of the Bolero



vehicle were talking amongst themselves about one Raja having helped in the kidnapping of PW-1 and he also noticed that the driver was being referred to by his name, whereas the other accused person was being referred to as Sonu by the accused persons.

7. The vehicle was apprehended by police at a point where the two other accused persons *viz*, Hareram Choudahry and the driver of the vehicle could manage to escape. The two others namely, the appellants were arrested on the spot. From the possession of appellant/Sonu, a syringe with needle was also recovered.

8. On the basis of the afore-noted written report lodged on 24.01.2017 at 9:00 P.M. at Sarairanjan, District – Samastipur, a case vide Mohiuddinnagar P.S. Case No. 12 of 2017 dated 25.01.2017 was registered for investigation against the appellants and three others for the offence under Section 364(A)/34 of the Indian Penal Code.

9. The police after investigation submitted



charge-sheet against the two appellants and they were put to trial. At the Trial, eight witnesses including the two Investigators were examined on the basis of which the judgment and order of conviction and sentence has been passed by the Trial Court.

10. Mr. Harsh Singh, the learned Advocate for the appellant/ Sonu Singh @ Sonu Kumar Singh (Cr. Appeal (DB) No. 1406 of 2018) has submitted that the case is absolutely false. The police has tried to conclude the case in a great haste without verifying whether the appellants were the persons who had abducted PW-1. It has further been submitted that the prosecution case totters at the seams for the very reason that the victim (PW-1) did not identify both the appellants at the Trial. This is the basic evidence, in the absence of which the conviction and sentence of the appellants is highly unwarranted. With respect to the deposition of other witnesses, Mr. Singh has submitted that if seen in totality, their



statements would appear to be absolutely discrepant and not at all in sync with the accusation against the appellants. Lastly, it has been submitted that the offence of kidnapping for ransom could not be proved by any standard and, therefore, the conviction of the appellants under Section 364(A)/34 of the Indian Penal Code by the Trial Court is unjustified.

11. Similar arguments have been advanced by Mr. Ganesh Prasad Yadav, the learned Advocate for appellant/Parmeshwar Dhangar (Cr. Appeal (DB) No. 1401/2018).

12. Mr. Abhimanyu Sharma, the learned Additional Public Prosecutor has made countervailing arguments suggesting that regardless of PW-1 not having identified the appellants in the dock and for which necessary explanation was offered by him, the very factum of the arrest of the appellants in presence of PW-1 which stands confirmed, the defence would not be entitled to argue that the basic and core evidence



of identification of the appellants at the trial is missing.

13. Though Mr. Sharma reckons that son of PW-1 who has been examined as PW-4 has not stated anything regarding the accusation of the appellants but his deposition brings out a clear concatenation of events; in the background of which, the arrest of the appellants by the Officer-in-charge of Police Station who also is one of the Investigators *viz*, Asgar Imam (PW-3) confirms that the victim (PW-1) was recovered at the instance of police who had been kept in the vehicle blind-folded and the two appellants were sitting inside the car. So much for the identification of the appellants for the crime alleged against them.

14. However, Mr. Sharma had no answer with respect to the requirement of the prosecution to prove that the abduction/kidnapping was for ransom and that there was any prior concert of both the appellants to execute the plan of kidnapping.



15. We have noticed from the deposition of PW-1 that in some respects, he has made a different version before the Trial Court. According to his version in the written report, he was just made to sit in between two persons in the Bolero vehicle and he could see the passers-by as also the presence of Police Officer at a particular cross-road when the vehicle was turned the other way. Later, at one of the cross-roads towards Samastipur, the vehicle was intercepted by a police vehicle whereupon he was recovered.
16. However all this while, according to his deposition at the Trial, he was blind folded. He could not have thus seen the movement of the police and the destination to which the vehicle was being driven to. Nonetheless, with respect to the core aspect of him having been forcibly dragged into the Bolero vehicle and his being recovered at the instance of the police, has been confirmed by him.
17. To the disadvantage of the prosecution,



however, he did not identify the appellants in the dock. However in the next breath, he has tried to explain the reason which appears to be very convincing. At the time of recording his *fardbeyan*, he was very nervous and, therefore, he could not identify the appellants in the dock after such a lapse of time. This was also for the reason that PW-1 had no idea about the appellants and had never met them before. There was no complaint against them.

18. Though PW-1 has not been declared hostile on his not identifying the appellants in the dock, but it appears that because he was recovered within no time and that his period of confinement was very small, he appears to be disinterested in prosecuting the case any further. Precisely for this reason, he disclosed, again to the discomfiture of the prosecution, that he was never called for Test Identification Parade. However, he confirmed that he was blind-folded while being made to travel in the vehicle and the cover over his eyes was removed



only by the police on his recovery.

19. Raveensh Kumar Jaiswal (PW-2) is the son-in-law of the victim(PW-1). According to the Investigator, he was the person who gave the information to the police and to the family members of PW-1 that PW-1 has been kidnapped by miscreants and is being taken to some unknown destination in a Bolero vehicle. He had supplied the telephone number of PW-1 (victim) to the police on the basis of which, the chase by the police was made and ultimately PW-1 was recovered. Alas! at the trial PW-2 turned hostile. Though he has been cross-examined at length by the prosecution but nothing else could be elicited as he plainly but stoutly denied everything what was spoken by him before the police. Unfortunately, no such specific questions were asked from the Investigator as to whether PW-2 had made such statement during the course of investigation.

20. With this fault of the prosecution, we will have



no option but to ignore the evidence of PW-2.

21. The only relevant evidence, therefore, is of the first Investigator *viz*, Asgar Imam (PW-3). He was posted as Officer-in-charge of Mohiuddinnagar Police Station on 24.01.2017. He had recorded the *fardbeyan* of PW-1 and had carried out the investigation for quite some time. He had examined PW-2/Kamesh Choudhary, Sunil Kumar (hostile), Abhinav Kumar @ Bobby and others. He had inspected the place from where the victim was abducted and also the place where he was recovered again. In his examination-in-chief, he has further disclosed that on 24.01.2017 at about 6:00 P.M., he received an information at the police station that a person has been kidnapped and is being taken to an unknown destination on a Bolero vehicle. He also received the information that the motorcycle of the victim was left behind at the place from where he was abducted. The information was reduced into a Station Diary entry, whereafter, he proceeded



towards the P.O. At the P.O., he met PW2 who claimed himself to be the son-in-law of the victim and informed him that while coming back from his office, his father-in-law (the victim/PW1) was kidnapped and the vehicle has headed towards the eastern direction. This information of PW2 also appears to be hearsay. However, the Investigator could put the telephone number of the victim on the radar and after ascertaining the tower location chased the vehicle. The Investigator was successful in recovering the victim. According to him, two other persons who were there in the vehicle managed to run away whereas the appellants were arrested. They also confessed their guilt. The name of Raja Kumar, a neighbour of the victim was also taken by the appellants as the person who gave information about the movement of the victim, for them to effect the kidnapping. The fardbeyan of the victim was recorded at the place of recovery. Both the appellants were arrested and a copy of arrest



memo was handed over to them. The arrest memos were signed by one Chandan Kumar Pandit and Amod Kumar, both of whom have not been examined at the Trial. However, since the arrest was effected by the I.O. who confirmed the same and the signature of PW1 on the seizure list effected contemporaneously with the arrest of the appellants, such facts stand proved.

22. The investigator, thereafter, narrated about the further leads in the investigation and the efforts made by him to locate all the accused persons. On being further questioned by the defence, he clarified that it was on the basis of tower location of the mobile number of the victim only, that such a chase was made in the correct direction. However, no witness before him had stated that the victim was forcibly dragged into the vehicle. The details of the Station Diary entry made by him could not be given to the Trial Court as the Station Diary entry was not brought on record ever. However, what is surprising



is that he failed to elicit any response from PW2 as to how he had reached the place of occurrence and had gathered information about the kidnapping of the victim.

23. As noted above, apart from PW2, Sunil Kumar and Kamesh Chaudhary/PWs 5 and 6 have also been declared hostile.

24. We get no assistance from the deposition of Dilip Kumar Singh (PW7), who has proved the seizure list and other documents. We say so for the reason that from the possession of the appellants, fire arm weapons were recovered but with respect to that recovery, a separate case was registered. The other recovery, namely, of a needle and a syringe from the possession of appellant / Sonu is of no consequence as it was never used nor was it sent for any forensic examination for confirmation that it could have been used for the purposes of kidnapping or for effectuating any crime.

25. This takes us finally to the evidence of Iqbal



Ahmad Khan, the second Investigator (PW6), who only submitted chargesheet against the appellants.

26. On a conspectus of the entire evidence put forth by the prosecution, only two things stand established. The first of such proved fact is that PW1 was abducted while he was coming back home. He was made to travel in a Bolero vehicle and was recovered at the instance of police within few hours.

27. What has not been proved at all is the purpose of kidnapping. We may add here that though the Investigator has disclosed that in the confessional statement of the appellants, there was a plan to extort Rs. Fifty Lakhs from the family of the victim, but since it remained only a confession which cannot be proved against the maker, there is nothing on record to indicate that the abduction was for the purposes of securing ransom.

28. The other issue which weakens the prosecution case to some extent is the non-identification of the appellants by the victim. However, we are inclined to



accept his explanation specially of his being disoriented as he had been kidnapped and was being taken to an unknown destination. It was only adventitious and as if by an act of deus-ex-machina that he was recovered by the police. Either PW2 gave correct information to the police about the kidnapping and the telephone number of the victim or was there some other source of information to the police to chase the vehicle. In any view of the matter, the purpose was served and the victim was recovered.

29. PW2 turning hostile is again a fact which weakens the prosecution case, especially with respect to purpose of kidnapping.

30. The son of the victim, however, confirmed that the family members were told about the kidnapping by PW2. However, none of the family members ever stated about any demand of ransom.

31. As the prosecution story goes, the intention to secure ransom remained in the contemplation of the



appellants.

32. Thus the prosecution has been able to prove that the victim was abducted and that also at the hands of the appellants and their associates but for what purpose remains unknown.

33. The offence, if at all, contemplated by the appellants remained inchoate where the victim was kept in confinement and, therefore, only Section 363 of the IPC gets attracted.

34. Section 363 IPC punishes the act of kidnapping and section 364 thereof punished the offence of kidnapping for abduction of a person in order to murder him. Section 364 (A) further adds to the gravity of the offence by involving an instance of coercive violence, to make a demand for ransom. And, therefore, maximum punishment for the three crimes, is seven years imprisonment; ten years imprisonment; and imprisonment for life or death respectively.

35. One may appreciate that the Parliament of



India provided for such nuanced and graded defining of the act of kidnapping. Such distinction ought to be understood before saddling a person with a charge falling in a particular genus of the offence.

36. In ***Lohit Kaushal v. State of Haryana; (2009) 17 SCC 106***, the Supreme Court has observed that it is true that kidnapping, as understood under Section 364(A) of the IPC, is truly a reprehensible act. The very gravity of the crime and the abhorrence which it creates in the minds of the Court are however the factors which also tend to militate against the fair trial of an accused in such cases. It is in this context that the Supreme Court has cautioned that a court must, therefore, guard against the possibility of being influenced in its judgments by sentiments rather than by objectivity and judicial considerations while evaluating the evidence.

37. For proving the case under Section 364 (A) IPC, it is necessary to prove the kidnapping or



abduction of the victim and keeping in him detention; threat to cause death or hurt and the use of kidnapping, abduction or detention with a demand to pay the ransom; and when the demand is not met then causing death.

38. In the present case, as noted by us, there was no demand and perhaps the future course of action was only in the imagination of the appellants which was never made public.

39. For the afore-noted reasons, we deem it appropriate to convert the conviction of the appellants from one under Section 364 (A) with the aid of 34 IPC to Section 363 IPC. We also consider it to be expedient to record a sentence of seven years for the offence under Section 363 IPC. While doing so, we are conscious of the position of law that a conviction for lesser offence is permissible when it does not result in any failure of justice.

40. Thus, both the appeals are partially allowed as the conviction and sentence of the appellants are



altered to one under Section 363 IPC with seven years rigorous imprisonment which both the appellants have already undergone.

41. The appellants are, therefore, directed to be released from jail forthwith if not detained or required in any other case.
42. Both the appeals are partially allowed.
43. Interlocutory application/s, if any, also stands disposed of.
44. Let a copy of this judgment be dispatched to the Superintendent of concerned jail for record and compliance.
45. Let the records of these appeals be also returned to the concerned Trial Court forthwith.

(Ashutosh Kumar, J)

(Jitendra Kumar, J)

sunilkumar/-

AFR/NAFR	AFR
CAV DATE	N/A
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