

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1021 of 2017

Arising Out of PS. Case No.-84 Year-2002 Thana- MAJHAULIA District- West Champaran

Raju Kuswaha S/o Sri Chanraman Bhagat, resident of Village- Bahuarwa,
Babu Tola, P.S.- Maghaulia, District- West Champaran.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 1120 of 2017

Arising Out of PS. Case No.-84 Year-2002 Thana- MAJHAULIA District- West Champaran

1. Ashim Chakravarty, Son of Late Ashwini Chakravarty,
2. Pradip Sarkar, Son of Ashok Sarkar, Both residents of Village- Lal Saraiya Colony, P.S. Majhaulia, District- West Champaran.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 1180 of 2017

Arising Out of PS. Case No.-84 Year-2002 Thana- MAJHAULIA District- West Champaran

Bachcha Sahni Son of Late Gopal Sahani, R/o Village- Jaukatiya Chhota
Malahi Tola, P.S.- Majhaulia, District- West Champaran.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 1246 of 2017

Arising Out of PS. Case No.-84 Year-2002 Thana- MAJHAULIA District- West Champaran

Police Sahani S/o Heera Sahni, R/o Village- Jaukatiya, Bara Mahali Tola,
P.S.- Majhauliya, District- West Champaran.

... .. Appellant/s

Versus



The State of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 1021 of 2017)

For the Appellant/s : Mr. Sheo Jee Mishra, Advocate.

For the Respondent/s : Mr. Dilip Kumar Sinha, APP.

(In CRIMINAL APPEAL (DB) No. 1120 of 2017)

For the Appellant/s : Mr. Sheo Jee Mishra, Advocate.

For the Respondent/s : Mr. Dilip Kumar Sinha, APP.

(In CRIMINAL APPEAL (DB) No. 1180 of 2017)

For the Appellant/s : Mr. Sheo Jee Mishra, Advocate.

For the Respondent/s : Mr. Dilip Kumar Sinha, APP.

(In CRIMINAL APPEAL (DB) No. 1246 of 2017)

For the Appellant/s : Mr. Anant Kumar Mishra, Advocate.

For the Respondent/s : Mr. Dilip Kumar Sinha, APP.

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE NANI TAGIA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 04-01-2024

1. All the four appeals have been heard together and are being disposed of by this common judgment.

2. We have heard Mr. Sheo Jee Mishra and Mr. Anant Kumar Mishra, learned Advocates for the five appellants herein in all the four appeals. The State has been represented by Mr. Dilip Kumar Sinha, learned A.P.P.

3. All the appellants have been convicted under Section 364(A) of the Indian Penal Code, *vide* judgment



dated 01.08.2017 passed by the learned Additional Sessions Judge, Fast Track Court-II, Bettiah in Sessions Trial No. 215 of 2003 arising out of Majhaulia P.S. Case No. 84 of 2002. By order dated 04.08.2017 they have been sentenced to undergo imprisonment for life, to pay a fine of Rs.10,000/- each and in default of payment of fine, to further suffer R.I. for six months.

4. One headmaster of a school, viz., Ram Anup Singh (P.W. 2) is said to have been kidnapped for about five days. The occurrence of kidnapping perhaps took place on 17.05.2002, sometimes in forenoon.

5. The FIR of this case has been lodged by one Awadhesh Kumar (P.W. 1), who served as a peon in Lalsareya High School in which the victim (P.W. 2) was the headmaster. The school was running in morning shift. After 11:30 A.M., the victim (P.W. 2) had left for his home on his motorcycle. Shortly thereafter, one Sadique Mian and Nipen Singh, both of whom have not been examined, came to the School and looked for P.W.



2. They had seen the motorcycle of P.W. 2 thrown in a ditch. They had come only to inquire regarding the whereabouts of P.W. 2.

6. This raised some suspicion in the mind of P.W. 1, who along with another peon viz. Sudama Prasad (not examined) and a teacher of the school viz. Deo Narayan Baitha (not examined) went to the place where the motorcycle of P.W. 2 was spotted by the aforementioned persons. At that place, P.W. 1 found personal belongings of P.W. 2 including his denture, a pair of sandals, a comb etc.

7. Something must have happened to P.W. 2.

8. An inquiry was made by P.W. 1 at that place. He was made to understand that one of the criminals had taken refuge in the house of appellant/Ashim Chakravarty, who has now been apprehended by the local people. P.W. 1 came to the school and telephonically informed the police. P.W. 1, therefore, concluded that P.W. 2, the headmaster of the school has



been kidnapped for ransom.

9. This fardbeyan of P.W. 1 was registered as Majhaulia P.S. Case No. 84 of 2002, dated 17.05.2002 for the offence under Section 364(A) of the IPC against unknown.

10. Very surprisingly, five persons/appellants were put on Trial without the prosecution bothering to examine anyone of the independent persons or of bringing on record any material which would justify their prosecution.

11. The I.O. of this case has not been examined and no explanation also has been offered by the prosecution for his non-examination.

12. We do reckon that the instant case was registered in the year 2002 and was finally disposed off in 2017. Nonetheless, bringing forth evidence before the Trial Court for proving guilt of the appellants was essential.



13. But for P.W. 1, who is the informant of this case and who had no idea about the accused persons; and the victim himself viz. P.W. 2, who though has taken name of some of the appellants, but whose deposition is full of inconsistencies, there is no other material brought on record by the prosecution to prove its case. Even the arrest-memo of the accused persons or the recovery-memo certifying the recovery of P.W. 2 has not been brought on record.

14. P.W. 2 is said to have made his statement under Section 164 of Cr.P.C., which statement though has been exhibited but the Magistrate, who had recorded the statement has not been brought to the witness-stand.

15. So exiguous being the materials in this case for us to make any further probe, we are left with no option but to analyze the deposition of P.W. 2 in some detail.

16. The story narrated by him does not inspire



confidence for very many reasons. He claims to have left for his home on his motorcycle, when he was stopped by appellant/Police Sahani and one Ajit Sahani, who has not been put on Trial. Later, one Mahesh Sahani (not put on Trial), came on motorcycle and insisted upon P.W. 2 to leave his motorcycle and go along with the accused persons. At that time, three persons had arrived; out of whom, one was identified by P.W. 2 as one of his students. Whether they had come for the rescue of P.W. 2 or were part of the brigade remains unknown.

17. One unknown person, according to P.W. 2, assaulted him by the butt of a gun, as a result of which he had become unconscious. Despite having become unconscious, he has narrated that he was taken on foot to a jungle. Thereafter, P.W. 2 has talked about his peregrination in the jungle and neighbouring areas. After about five days, he is said to have been kept in a dilapidated hut, in front of which there was a hand-pump. The hand-pump was used by the members of the



public. On the fifth day *i.e.* on the day of his release, P.W. 2 claims to have mustered up the courage for shouting for help when he saw many persons taking water from the hand-pump. He threw one weapon kept by his side out of the hut which attracted the attention of many people. Appellant/Police Sahani is then said to have assaulted him but by then, many persons had arrived including the police and P.W. 2 could be taken away from the clutches of the criminals.

18. The yarn spun by P.W. 2 does make up for an interesting story but the cavernous wedges in such story make it very difficult to accept. If he were kidnapped for ransom, whatever money he was carrying would have been taken away by the miscreants. If he had nothing on his person, the purpose of kidnapping would have been served only if the family members of the victim would have been informed for paying up the ransom.

19. There is no evidence at all regarding any



such effort by the miscreants.

20. None of the family members of P.W. 2 have been chosen to be a witness in this case. Even P.W. 2 does not at all refer to any pressure on him to get money from his family.

21. What then was the purpose of kidnapping him?

22. A teacher ought not be doubted without any reason but then how did he come to know the names of all the five persons/appellants remains an enigma to us.

23. None of these persons were either the students of the school or were associated with P.W. 2. One Ashim Chakravarty was named by some one in the village when P.W. 1 was inquiring about P.W. 2. One criminal was said to have taken refuge in the house of appellant/Ashim Chakravarty.

24. Who was that person?

25. What happened to him?



26. For the paucity of evidence available on record and also being conscious of the remit of this Court, we have looked through the police papers also. All that we could gather is that the police suspected some of the miscreants because of their bad track-record and in the process, several persons were arrested who confessed their guilt.

27. Hence, the implication of the appellants.

28. P.W. 2 has only talked about appellant/Police Sahani, Ajit Sahani and Mahesh Sahani, the latter two of whom have not been made accused or tried. P.W. 2 has further stated that when the police arrived at the place where he was kept confined, appellant/Raju Kuswaha also came along with the police party.

29. These sequence of events reflect that the names of the appellants were told to the victim (P.W. 2) for him to confirm that the police had not played the blind man's buff and that the case had been solved.

30. Without doubting the genuineness of P.W. 2,



especially his accusation of being kidnapped and kept in confinement for five days, a court of law would need some evidence for believing P.W. 2.

31. As we have noted, but for the *Chowkidar* of the school who had no idea except that P.W. 2 was found missing and the victim himself, no other person has been examined at the Trial.

32. This definitely has caused prejudice to the case of the appellants.

33. The police appears to have been playing the Russian Roulette with the entire criminal investigation system.

34. Right from 2002 till the conclusion of Trial, all the five appellants were on bail. They are in jail since 2017 post-conviction.

35. Considering the complete absence of cogent evidence for justifying the conviction and sentence, we are left with no option but to set aside the judgment and



order of conviction by the Trial Court and acquit the appellants of the charge levelled against them.

36. All the appeals stand allowed.

37. The appellants are directed to be released forthwith from jail, if not required or detained in any other case.

38. Let a copy of this judgment be dispatched to the Superintendent of the concerned Jail forthwith for compliance and record.

39. The records of this case be returned to the Trial Court forthwith.

40. Interlocutory application/s, if any, also stand disposed off accordingly.

(Ashutosh Kumar, J)

(Nani Tagia, J)

manoj/krishna-

AFR/NAFR	NAFR
CAV DATE	NA
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