

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL APPEAL (SJ) No.670 of 2019**

Arising Out of PS. Case No.-257 Year-2004 Thana- BANMANKHI District- Purnia

1. Brahamdeo Mandal Son of Late Luri Mandal Resident of Village - Maliniya, P.S. Sarsi District Purnea.
2. Rajesh Mandal Son of Late Luri Mandal Resident of Village - Maliniya, P.S. Sarsi District Purnea.
3. Ram Pravesh Mandal Son of Late Luri Mandal Resident of Village - Maliniya, P.S. Sarsi District Purnea.
4. Ramdeo Mandal Son of Late Luri Mandal Resident of Village - Maliniya, P.S. Sarsi District Purnea.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

**Appearance :**

For the Appellant/s : Mr.Sunil Kumar Pathak

For the Respondent/s : Mr.Abhay Kumar, APP

**CORAM: HONOURABLE MR. JUSTICE NAWNEET KUMAR  
PANDEY**

**ORAL JUDGMENT**

**Date : 24-04-2025**

Heard the learned counsel for the appellants as well as the learned APP for the State.

2. This appeal has been preferred by the appellants against the Judgment of conviction dated 11.01.2019 and the order of sentence dated 17.01.2019, passed by Sri Ramesh Chandra Mishra, Fast Track Court-2, Purnea in Sessions Trial No. 537 of 2005 arising out of Banmankhi P.S. Case No. 257/2004, corresponding to G.R. Case No. 2046/2004, whereby and whereunder the appellants have been convicted u/s 364/34



of the I.P.C and Section 27 of the Arms Act, and sentenced to undergo R.I. for 10 years and a fine of Rs. 3000/- each u/s 364 of the IPC, and in default of fine, S.I. for 2 month each, and R.I. for 3 years u/s 27 of the Arms Act. All the sentences were directed to run concurrently.

3. The informant gave his written report dated 11.11.2004 to the SHO, Banmankhi police station, on the basis whereof Banmankhi P.S. Case No. 257 of 2004 dated 11.11.2004 was registered for the offences punishable under Section 364/34 of the IPC and Section 27 of the Arms Act.

4. The prosecution case, in brief, is that on 10-11-2004, at about 7.00 P.M., the appellants Brahamadeo Mahto, Rajesh Mandal, Ram Pravesh Mandal and Ramdev Mandal, armed with deadly weapons, along with 8-9 unknown miscreants, entered into the premises of the informant (PW-10), and kidnapped his son Jai Kumar, aged about 26 years, at the gunpoint. They also opened fire in order to create fear. The informant averred in his written report that several litigations were running in different courts at Purnea for landed properties between the appellants and the informant. After conclusion of the investigation, the charge-sheet was submitted on the basis whereof the C.J.M, Purnea took cognizance, vide order dated



09-03-2005 against these four appellants.

5. The case was committed to the court of sessions and charges were framed against the appellants on 18-08-2006 for the offences punishable under section 364/34 of the Indian Penal Code and 27 of the Arms Act. The appellants denied the charges, hence the trial commenced.

6. In order to prove the prosecution case, 11 witnesses have been examined on behalf of the prosecution. The following documentary evidences have also been exhibited on behalf of the prosecution:-

| Exhibits | Description                                                                                |
|----------|--------------------------------------------------------------------------------------------|
| Ext.-1   | Signature of the victim Jai Kumar (PW 9) on his statement under Section 164 of the Cr.P.C. |
| Ext.-2   | Written report given by the informant Nandlal (PW 10)                                      |
| Ext.-3   | Formal FIR                                                                                 |
| Ext.- 4  | Endorsement on the written petition by the SHO of Banmankhi P.S.                           |

7. The defense has also examined five witnesses. Some documentary evidences have also been adduced on behalf of the defense. These documentary evidences are as follows:-

| Exhibits | Description                  |
|----------|------------------------------|
| Ext.-A   | Panchnama dated 22.02.2015   |
| Ext.-B   | Rent receipt dated 11.8.2016 |
| Ext.-C   | Judgment, final order dated  |



|         |                                                                           |
|---------|---------------------------------------------------------------------------|
|         | 30.01.2016 passed in Title Suit No. 239/2008.                             |
| Ext.- D | Certified copy of the decree dated 12.02.2016 in Title Suit No. 239/2008. |

8. PW1 Baijnath @ Bishwanath Mandal, who is co-villager of the informant, has stated in his deposition that the Nand Lal, the informant is his uncle in relation. While this witness was returning after attending the call of nature and reached near Musahri Tola, he saw Jai Kumar (the victim) in captivity of the appellants, who were forcibly taking him away. They were armed with deadly weapons. In his deposition, this witness has admitted that there is land dispute between both the parties. In his cross-examination, he has stated that when he came at the village, then he came to know about the alleged occurrence.

So this part of the deposition of the witness is contrary to his earlier version in examination in chief, in which he has stated that he saw the victim Jai Kumar in captivity of the appellants. This portion of his deposition shows that he is not an eye-witness.

9. PW2 Tahsildar Hembram states that on hearing the sound of firing, he came out of his house and saw the appellants along with 10-12 unknown miscreants forcibly dragging and



assaulting Jai Kumar. They crossed the river and went away. This witness has also admitted that there is land dispute between the parties. In his cross-examination, this witness has stated that Jai Kumar returned to his house after 20-25 days. This witness, in his cross-examination, has stated further that several litigations were pending between both the parties.

10. PW3 Manoj Mandal is the driver of the informant and he claims to be present in the house of the informant on the date and time of the occurrence. This witness has stated that firstly the miscreants apprehended him, but later they apprehended Jai Kumar on the order of appellant Ramdeo Mandal.

11. PW4 Gopal Mandal is a co-villager of the informant. This witness has stated that when he went to the door of the informant, he came to know that the appellants, along with other unknown miscreants, had kidnapped Jai Kumar. The deposition of this witness shows that he is not an eye-witness and after the occurrence, he had reached the house of the informant.

12. PW5 Deep Narayan Mandal is also a hearsay witness, so his evidence has no much relevance.

13. PW6 Mahabir Mandal is also not an eyewitness.



After hearing the sound of firing, he went to the house of the informant, who narrated the entire occurrence to this witness. In his cross-examination, he has stated that the victim, Jai Kumar, returned after 25-26 days. He also stated that there is long-standing land dispute and several cases pending between both the parties.

14. PW 7 Daulat Mandal is also a hearsay witness. He came to know about the occurrence.

15. PW 8 is Bhauli Devi, mother of the victim, Jai Kumar. She also claims to be an eye-witness. She deposed that she was at her house in the evening at 7.00 p.m. In the meantime, 10-15 miscreants equipped with firearms, entered into her premises, They caught hold of her son Jai Kumar and forcibly kidnapped him. Her son returned after 20-25 days when he escaped from the confinement/clutches of the miscreants.

16. PW 9 is the victim himself. He deposes that the occurrence had taken place on 10-11-2004 at about 7.30 pm. He was making candle along with PW 3, Manoj Mandal. Meanwhile, the appellants along with 6-7 unknown miscreants came there. First of all, the miscreants caught hold of his driver, Manoj Mandal, but on the command of Ramdeo Mandal, they released him and caught hold of this witness. They were



equipped with firearms. They took this witness across the river. They kept him under their captivity for 22 days and in one morning, at the pretext of call of nature, he fled away from their captivity. The watchman, who was deputed for keeping close vigil on him, was in drunken condition at that time. He came to the police station and the SHO brought him to the court and his statement under Section 164 of the Cr.P.C. (Ext.-1) was recorded.

17. PW 10 is the informant and father of the victim. He states in his deposition that the appellants along with 6-7 miscreants, equipped with deadly weapons, entered his house at 7.30 pm. Firstly, they apprehended his driver Manoj Mandal and on the order of appellant Ramdeo Mandal, they rescued him and caught hold of the victim and they dragged him away. The accused persons also fired three rounds to create fear. He stated that he gave information to the SHO who reached the place of occurrence and chased the accused persons, but they fled away. In his cross-examination, this witness has stated that the accused persons had filed a *bataidari* case against the informant. He has also deposed that he had lodged more than four cases against the accused persons, because whenever the accused persons committed mischief with the informant, then he was compelled



to file cases against the above accused persons.

18. PW 11 is the investigating officer. He has stated that after taking the charge of investigation, he inspected the place of occurrence, which is the premises of the house of the informant. This witness has given description of the place of occurrence. He has stated that he recorded the statement of the witnesses. On 02-12-2004, the victim Jai Kumar appeared at the police station and apprised that he had escaped from the captivity of the accused persons. Then the investigating officer (this witness) brought him to the court of CJM, where the statements of the victim under 164 of the Cr.P.C. (Ext.-1) was recorded. In his cross-examination, he stated that he reached the place of occurrence at 10.00 p.m. in night. The informant had given a written petition, upon which he inspected the place of occurrence. In his cross-examination, he has stated that the victim came to the police station on 02.12.2004, but this witness never went to the place where the victim is alleged to be kept in captivity.

19. The learned counsel for the appellants has submitted that the evidence of the prosecution itself shows that it is a false and fabricated case merely due to long-standing land dispute between the parties. It is an admitted fact that both the



parties are at litigating terms, and 4-5 cases are pending between them. He has submitted further that the victim is alleged to have been kept in captivity of the appellants for 22 days, but neither they tortured him, nor demanded ransom, nor even threatened to kill him, nor they put any kind of pressure on him to elicit benefit from his captivity. The purpose of captivity for such a long duration has not been explained. The further submission of the learned counsel is that surprisingly, the victim appeared all of a sudden at the police station, and it is more surprising that the investigating officer even when he came to know that the victim was kept under captivity, did not even take pains to inspect the place where he was captivated. Neither he took any effort to apprehend the accused persons. The learned counsel has also submitted that the informant PW 10, during his deposition, has stated that he informed the police station, whereupon the I.O. came there and chased the accused persons, but they fled away. But contrary to the deposition of the informant, the I.O. (PW 11) has stated that he received the information at about 9.15 p.m. and he visited the place of occurrence at 10.00 at night, whereas the occurrence is alleged to have been reported at 7.15 p.m. The investigating officer, in his deposition, has stated that he never chased the accused



persons.

20. It appears that there are material contradictions in depositions of PW 10 and PW 11. As per prosecution case, the occurrence had taken place at 7.15 p.m. and it was reported at 9.15 p.m. The informant states that the police came and chased the miscreants, whereas the investigating officer deposed that he went to the place of occurrence at 10.00 p.m. and he never chased the accused persons. It is surprising that the investigating officer did not take pains to go to the second place of occurrence, where the victim is said to have been captivated. There is no explanation about his not visiting the second place of occurrence. The victim (PW 9) states in his deposition that he was in captivity for 22 days and when the watchman who was deputed to have a vigil on him was in drunken condition, he fled away.

21. The victim did not state about behavior or mistreatment at the hands of the accused persons. All of a sudden, he appeared at the police station and rendered his statement under Section 164 of the Cr.P.C. The material contradiction indicated above makes the entire prosecution case as doubtful and uncreditworthy.

22. Considering the above-mentioned facts and



circumstances, giving the benefit of doubt to the appellants, the judgment of conviction and order of sentence dated 11.01.2019 and 17.01.2019, respectively, passed by Sri Ramesh Chandra Mishra, Fast Track Court-2, Purnea in Sessions Trial No. 537 of 2005 arising out of Banmankhi P.S. Case No. 257/2004, corresponding to G.R. Case No. 2046/2004, are set aside.

23. Consequently, the appeal is allowed.

24. Since the appellants are already on bail, they are discharged from the liabilities of bail bond.

**(Nawneet Kumar Pandey, J)**

HR/-

|                   |             |
|-------------------|-------------|
| AFR/NAFR          | NAFR        |
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