
(2010) 03 PAT CK 0012
In the Patna High Court

Kaushal Kumar Singh

APPELLANT

Vs

State of Bihar
 Jaleshwar Prasad Singh Vs State of
Bihar and Shyam Kumar Singh

RESPONDENT

Date of Decision : 25-03-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156
Penal Code, 1860 (IPC) — Section 34, 364A

Citation : (2010) 03 PAT CK 0012

Hon'ble Judges : Dinesh Kumar Singh, J; Dharnidhar Jha, J

Bench : Division Bench

Judgement

Dharnidhar Jha and Dinesh Kumar Singh, JJ.—The present Criminal Appeal arises out of the judgment of conviction and order of sentence in respect of appellant Kaushal Kumar Singh dated 18.6.2003 and 19.6.2003, respectively, passed by the learned Additional Sessions Judge, 5th court, Vaishali at Hajipur in Sessions Trial No. 347 of 2001 by which the appellant was sentenced to rigorous imprisonment for life as also to pay a fine of Rs. 10,000/-, in default of which was to suffer simple imprisonment for three months. By the same judgment co-accused Shyam Kumar Singh who was also being tried with appellant Kaushal Kumar Singh for a charge u/s 364A/34 of the Penal Code was acquitted. Appellant Kaushal Kumar Singh brings into question the propriety of the findings upon his guilt recorded by the learned trial Judge through the impugned judgment, whereas the connected revision petition has been preferred by the informant of the case, namely, Jaleshwar Prasad Singh to challenge the correctness of the order of acquittal passed in respect of accused Shyam Kumar Singh who stands impleaded as opposite party No. 2 in the connected revision petition.

2. We have heard the connected matter together and we are disposing them of by this common judgment.

3. Before we consider the arguments advanced before us by the contending

counsel, we want first to note the facts of the case in brief.

4. It may be pertinent to point out that a petition of complaint was filed in the court of Chief Judicial Magistrate, Vaishali, at Hajipur, vide Complaint Case No. 842 of 1999. A copy of the said complaint petition was ordered to be sent u/s 156(3) of the Cr.P.C. to the concerned Police Station, i.e., Lalganj for holding investigation into the allegations. This is how the F.I.R. of the case, Ext.3 was drawn up by the Officer-in-charge of the said Police Station and the investigation was taken up.

5. The complainant stated that appellant Kaushal Kumar Singh with another boy came by a Yamaha motorcycle to his house sometimes on 13th February, 1999, in his absence and took away his son Ashutosh Kumar alias Guddu with him. When the complainant came back, he learnt from his wife(not examined) and his son, P.W. 1 Manoj Kumar Singh about the taking away of Ashutosh Kumar alias Guddu. The complainant remained expectant for 3-4 days thinking that his son should come back. His son not coming back, the complainant alleged, he contacted the father of the appellant, i.e., acquitted accused Shyam Kumar Singh at his house and narrated about the taking away of his son by appellant Kaushal Kumar Singh and pleaded that he should exercise his influence over his son so as to getting his son released from his captivity. It is alleged that acquitted accused Shyam Kumar Singh assured him that he will act as requested, but there was nothing coming out of it as a result of which the informant lodged a report about his son going missing at Lalganj Police Station on 19.2.1999 in which he did not divulge any of the details including the name either of the appellant or of anybody as the person who could have taken his son away.

6. The informant alleged further that sometimes after he had informed the police, a telephonic call was received by his nephew Nand Kishore Singh alias Nandu (not examined) at his house in Hajipur who was asked by the caller to inform the complainant Jaleshwar Prasad Singh that his son had been abducted and that he should arrange for a sum of rupees ten lacs for payment as ransom so as to getting his son released. The informant went in tizzy and again came to the house of appellant Shyam Kumar Singh with some persons(names not disclosed) and again talked to accused Shyam Kumar Singh, pleading that the informant was a poor person and could not arrange as huge an amount as required to be paid by him,, upon which Shyam Kumar Singh is said to have asked the informant to at least arrange for 4-5 lacs of rupees and get his son released. The informant alleged that he implored accused Shyam Kumar Singh and pleaded for knowing the whereabouts of his son who gave out that if he could not pay the ransom, there could be a possibility of his son being murdered and his dead body being disposed of. The informant stated that he was deeply horrified after having heard the above words from accused Shyam Kumar Singh, but in spite of that he did not inform the police.

7. The informant further stated that on 27.2.1999 the proprietor of Chandan Hotel, namely, Ashok Kumar Singh(P.W.4) gave him a letter said to be written by

his son Ashutosh Kumar which letter appears marked Ext.1 giving out to the informant that someone had left that letter at his hotel addressed. The informant stated that he went through the contents of the letter which was indeed written by his son and a message of the captors of his son had been passed on to him by his son through that letter that he should arrange for a sum of rupees ten lacs so that the boy could be released. On the next day of the receipt of the letter another phone call was received by P.W.3 Moti Lal Chaudhary, the proprietor of Annapurna Vastralay when the informant had talked directly with the caller, warning the informant not to give an information to the police as he had done till that date and to ensure that a sum of rupees ten lacs was arranged and was delivered at a particular place to the captors of his son whereupon the boy would be released, else, he would be killed. The caller warned the informant not to inform the police, else, the whole of his family could be annihilated.

8. The informant stated that he was deeply disturbed after having received the above telephone call and that he was clueless as to what he should do and he again went to the house of appellant Kaushal Kumar Singh and implored accused Shyam Kumar Singh again so as to getting his son released but nothing came out of it. Ultimately, he contacted the Officer of Lalganj Police Station who stated that the informant having remained silent for such a long period, should approach the court and file a case then only he could take some action. This is how, the informant filed the petition of complaint which is the basis of the F.I.R.

9. P.W.6 S.I. Nageshwar Thakur had investigated the case. He was ordered, after registration of the case by the Officer-in-charge of Lalganj Police Station to investigate the case and in this connection he went to the place of occurrence and different places. He recorded the statements of different persons and inspected the place of occurrence which was the house of the informant and after closing the investigation sent up the accused persons for trial by submitting the charge sheet.

10. The defence of the appellant as may appear from suggestion given to P.W.5, the informant, in paragraph 51 was that he had been set up by one Kedar Nath Singh whose daughter married appellant Kaushal Kumar Singh against his will and, further, that the said Kedar Nath Singh happened to be one of the relatives of the informant and, as such, he filed a false case for putting criminal pressure upon the appellant.

11. During the course of trial, the prosecution examined six witnesses out of whom P.W. 1 Manoj Kumar Singh is the son of the informant, P.W. 5 Jaleshwar Prasad Singh is the informant and P.W. 2 Awadh Kishore Singh is also a witness who is named in the petition of complaint and who appears to be the nephew of the informant. He has given evidence on the point that he had received the telephone call and by the first call the informant had been asked to arrange for rupees ten lacs for paying up the ransom so as to getting his son released. P.W.3 Moti Lal Chaudhary is the proprietor of Annapurna Vastralaya and he did not support the part of the story that the second telephone call had come into his

establishment and the informant had talked to the caller. P.W. 4 Ashok Kumar Singh is the proprietor of Chandan Hotel who allegedly had received Ext.1, the letter written in the hand of the victim which was passed on by P.W. 4 to the complainant/informant as per his claim as appears from the written complaint. However, P.W. 4 did not support that story and was declared hostile along with P.W.3. During their cross examination by the prosecution there does not appear any tangible material brought on record so as to substantiating the charge. P.W.5 is the informant and he has supported his story almost in same terms as stated by him in the complaint petition. P.W. 6 S.I. Nageshwar Thakur, as just pointed out, had investigated the case.

12. We have heard Shri Nachiketa Jha, learned Counsel appearing on behalf of the appellant and Opposite Party No. 2 in the connected criminal Revision petition. We have also heard Shri Madan Mohan Prasad in the revision petition as also for the informant in the criminal appeal. We have heard Smt. Shashibala Verma, learned Additional Public Prosecutor for the State.

13. Shri Jha took us through the evidence of the witnesses and contended that the most important witnesses, like, P.Ws. 3 and 4 did not support the important part of the prosecution story. It was next contended that the person who admittedly had received the first call from the captors of the son of the informant, i.e., Nand kishore Sigh alias Nandu has not been examined and in his place another person like p.W.2 Awadh Kishore Singh who is of course named in the complaint petition, but is not stated to have received the telephone-call at any stage of the entire investigation or at any stage prior to the date he was examined on that part of the information of the informant. It was next contended that the conduct of the informant was suspect and was such as not to make it possible for any court to act upon his evidence and to uphold the order of conviction, least to talk of setting aside the order of acquittal of co-accused Shyam Kumar Singh. We were taken through the relevant parts of the evidence of P.W. 5 by Shri Jha to buttress his submissions.

14. Shri Madan Mohan Prasad, learned Counsel appearing for the petitioner in the connected revision petition and for the informant in the Cr. Appeal contested the contention of Shri Jha tooth and nail. It was contended by Shri Prasad that lapse or unintentional act which was highlighted by Shri Jha by referring to the evidence of P.W.5 could be considered in the light of the disturbed mental state of the informant and some allowances have to be given to him for those lapses. Shri Prasad was making scathing attack on the finding of the learned trial Judge when he was recording the order of acquittal in favour of co-accused Shsyam Kumar Singh by referring to us different paragraphs of the judgment in the light of the contention noted down by him in his revision petition, vide paragraphs 7 and 8. It was contended by Shri Prasad that not only the order of conviction of appellant Kaushal Kumar Singh was good but the acquittal of co-accused Shyam Kumar Singh appears perverse and it was a fit case in which this Court should interfere in its provisional powers by setting aside the order of acquittal to remit

back the case to the trial court for retrial.

15. Sushri Verma was also supporting the findings as regards the conviction of appellant Kaushal Kumar Singh and the contention of Shri Prasad on acquittal of co-accused Shyam Kumar Singh.

16. The most important aspects of the case have always to be kept in mind so as to appreciating the evidences of P.Ws. 1 and 5 who are, to us, the two material witnesses and two family members of the alleged victim whose evidence should be highly important for our consideration. One aspect is that the boy was taken away, admittedly, on 13.2.1999. The first report which was lodged by the informant was on 19th of February, 1999, i.e., after six days of the incident. What was the content of that information which was given to the Officer-in-charge of Lalganj Police Station has been stated both in the petition of complaint as also in the evidence of P.W. 5 in paragraphs 5 and 30. He has stated in paragraph 30 during cross examination on his statement made in paragraph 5 that while he was lodging his report on 19.2.1999 he did not name any one as person or persons taking away his son. Not only that, he appears stating in his evidence as also in his petition of complaint that whenever he went to the house of co-accused Shyam Kumar Singh he was accompanied by his son and some other persons also. P.W. 5 was saying that he was hiring a vehicle, as may appear from paragraphs 20,21 and 22 of his evidence, for going to the house of the accused with a set of persons. The most curious thing is that when he was lodging the report, he was not naming any one. He could not even state that some one, even unknown, had come to his house and had taken away his son by motorcycle. Not only that, P.W. 1 who was the first person or may be one of the two persons who had informed P.W. 5 about taking away of Ashutosh Singh, appears a lettered person, but he did not note down the number of the motorcycle and there is complete absence of the details of the vehicle which was used by the accused persons in taking away the victim. The important aspect about which we were talking just now is that in spite of these circumstances occurring in between the day of occurrence and the filing of the complaint petition, the informant who appears to have met the Police Officer on the previous two occasions, did not tell anything about the participation of the appellant or the opposite party No. 2 in the manner or in connection with the alleged occurrence as has been alleged by him in his petition of complaint or the evidence given by him. He had quite some good opportunities, as per his own statement, to render the information correctly to the Police and to get the criminal law in motion. But, we are simply astonished to know that the father whose son was taken away and who knew as to who could be the accused and further knew as to in whose captivity his son could be, was not making any effort to lodge a report with the proper investigating authority with full and complete details.

17. Besides the above, the other part of the story also appears suspect, if we are permitted to say so. The first name which is stated in the petition of complaint is

of Nand Kishore Singh alias Nandu who is said to have received the first telephone call from the captors of the boy. There is no mention of any other person as witness in the petition of complaint. This may be argued that there might be a person other than the appellant who could have been contacted by the captors of the son of the informant. But, when we look to the evidence of P.W. 5 in paragraph 6 he does not name Awadh Kishore Singh as the witness who had received the telephone call for the first time conveying the informant that his son had been abducted and he was required to arrange for payment of the ransom. This is the reason we are not inclined to act upon the evidence of P.W. 2 Awadh Kishore Singh in spite of the fact that his name figured as a witness at the foot of the complaint petition. We would have been happy to act upon his evidence if the informant or P.W. 1 would have told us through his statement that Awadh Kishore Singh had at least received the telephone call. That not being the case, we find it highly unsafe to act upon the evidence of P.W. 2.

18. As regards the story of receipt of the letter or the receipt of second telephone call by P.Ws. 3 and 4, we may note in one line that P.Ws. 2,3 and 4 have not supported that part of the prosecution story. Besides, the informant has stated that he always was at the door steps of the accused persons with some persons other than P.W.1. Those persons have not been examined. No name is coming from P.W. 5 or P.W. 1 as to who were those persons who had accompanied him on three occasions to the house of the accused persons by a vehicle as appears from paragraphs 20 and 22 of the evidence of P.W. 5. There is no mention of this fact also in the petition of complaint that he was accompanied by any such persons to the house of the accused persons.

19. Shri Prasad was appealing to our conscience to consider the mental state of the father of the victim boy who could be in a highly distressed state of mind on account of his son being abducted and being taken away and, secondly, after having received the threats of his son being killed if he did not pay the ransom. He was the father and might have been distressed and horrified and he might have been hankering to get his son saved from being sacrificed due to non-payment of the ransom amount. In the above circumstance, as regards the conduct of P.W. 5, he ought to have rushed to the police and ought to have informed it that what was brewing in the pot. Having found the conduct of the informant quite inconsistent with the natural conduct of a father, we find no good reason to act upon such an evidence to uphold the order of conviction.

20. For the above reasons, we find that the order of conviction passed against the appellant Kaushal Kumar Singh could not be sustained. Likewise, on those reasons the order of acquittal passed against opposite party No. 2 Shyam Kumar Singh also does not require to be interfered with.

21. On the above ground Criminal Appeal No. 280 of 2003(D.B.) succeeds and is allowed. The Criminal Revision Petition No. 460 of 2003 is dismissed as of no merit. If the appellant Kaushal Kumar Singh continues to be in custody, he shall be released forthwith, if not wanted in any other case.