
(2010) 03 PAT CK 0086
In the Patna High Court

Sheoji Rai and Others

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 11-03-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 82
Penal Code, 1860 (IPC) — Section 120B, 302, 363, 364A, 365

Citation : (2010) 03 PAT CK 0086

Hon'ble Judges : Shyam Kishore Sharma, J;Dinesh Kumar Singh, J

Bench : Division Bench

Final Decision : Allowed

Judgement

S.K. Sharma, J.—All the above named six appellants have preferred this appeal against the judgment of conviction dated 11.05.2006 and order of sentence dated 12.05.2006 passed by Additional Sessions Judge, Fast Track Court No. 1, Motihari in Sessions Trial No. 966/190 of 2004/04 by which they have been convicted under Sections 364A and 120B of the Indian Penal Code and have been sentenced to undergo rigorous imprisonment for life and a fine of Rs. 5000/- to each u/s 364A of the Indian Penal Code and in default of payment of fine to further undergo rigorous imprisonment for two years. No separate sentence has been awarded for offence u/s 120B of the Indian Penal Code though they have also been convicted under this offence.

2. On the basis of a written report dated 26.03.2003 submitted by Binod Prasad before the Officer-in-charge of Turkaulia police station, the present case was registered in which it was alleged that informant's father Krishna Lal Sah was abducted by unknown criminals at 11.30 P.M. on 25.03.2003 while he was sleeping at Machan in the premises of salor plant. Bholi Rai, a compounder working in a nearby clinic of Dr. Binod Kumar, came to the house of the informant and narrated that he woke up on the begging sound of informant's father when he was taken away by the criminals through a commander jeep and at that time he was crying for help. After this information, the informant and his

brothers namely, Pramod, Paramanand and Bhola along with Bholi Rai went at salor plant and found the bed of their father scattered. The mark of tyre of vehicle was also present. The information to the police resulted in Turkaulia P.S. Case No. 65 of 2003 dated 26.3.2003 for offences under Sections 363 and 365 of the Indian Penal Code. Sections 364A and 120B of the Indian Penal Code were added by order dated 5.4.2003. The matter was investigated into and after completion of investigation, chargesheet was submitted for offences under Sections 364A, 302 and 120B of the Indian Penal Code against the twelve accused persons. Cognizance was taken and thereafter the case was committed to the court of sessions where charges under Sections 364A, 302 and 120B of the Indian Penal Code were framed and explained to the accused persons. They pleaded innocence, so the trial proceeded.

3. The defence of the appellants and other accused persons was of false implication and also that the entire evidence has been carried out on wrong presumption of fact. Bholi Rai (P.W. 2) who has allegedly seen the victim being carried by the miscreants has not named the accused persons though he in his evidence has stated that he was knowing all the persons of the village of Laxmipur and all the appellants except appellant No. 5 are residents of village Laxmipur. So, in fact, nobody has seen the occurrence though according to P.W. 2 Bholi Rai, the accused persons were flashing their torches and there was sufficient light.

4. In order to prove its case the prosecution has examined altogether 13 witnesses. They are : P.W. 1 Manish Kumar alias Bhola, P.W. 2 Bholi Rai, P.W. 3 Beyas Prasad, P.W. 4 Kamru Zamma, P.W. 5 Jitendra Sahni, P.W. 6 Md. Amanullah, P.W. 7 Pannalal Prasad, P.W. 8 Parmanand Prasad, P.W. 9 Binod Prasad (informant of this case), P.W. 10 Shyam Narayan Prasad, P.W. 11 Pramod Kumar, P.W. 12 Jawahar Pd. Yadav and P.W. 13 Uday Singh, an ASI who was posted at Turkaulia police station at the relevant time.

5. The prosecution also exhibited some documents. Ext. 1 is seizure list, Ext. 2 is fardbeyan, Ext. 2/1 is an application of P.W. 9 (informant), Ext. 3 is signature of P.W. 10 on Ext. 1, Ext. 4 is the endorsement on Ext. 2, Ext. 5 is letter of P.W. 2 (Bholi Rai) given to the Officer-in-charge of Ghorasahan police station for verifying the name and address of the accused Rajendra Sahni, Ext. 6 is certified copy of F.I.R. of Turkaulia P.S. Case No. 92 of 2003, Ext. 7 is certified copy of the chargesheet of Turkaulia P.S. Case No. 92 of 2003, Ext. 10 is the certified copy of the ordersheet dated 25.7.2000 in Turkaulia P.S. Case No. 267 of 2001 by which Pramod Kumar (P.W. 11) was discharged, Ext. 11 is certified copy of chargesheet of Turkaulia P.S. Case No. 267 of 2001 and Ext. 12 is certified copy of F.I.R. of Turkaulia P.S. Case No. 267 of 2001.

6. No witness has been examined on behalf of the defence. Only certified copy of process u/s 82 Cr.P.C. in Turkaulia P.S. Case No. 267 of 2001 has been exhibited as Ext. 1 to show that P.W. 11 was an accused in that case.

7. The trial court after taking into consideration the entire evidences and other materials on record acquitted six accused persons namely, Rajendra Sahani, Santosh Prasad, Harendra Yadav, Shambhu Yadav, Yogi Yadav and Anup Sah of the charges and found only the above six appellants guilty for the offences as stated above.

8. The most important witness of the case is P.W. 2 Bholi Rai who had gone to the house of the informant and had informed him about the kidnapping of informant's father by unknown criminals. This witness is a resident of village Laxmipur under Turkaulia police station. He has stated that in the night of the occurrence, some unknown persons came and forcibly taken away informant's father Krishna Lal Sah. This information was given to the informant by him. He suspected that 5 to 7 criminals were involved but they were unknown. He in his evidence has further stated that he knows all the persons of village Laxmipur. Except one, all the appellants are residents of village laxmipur. If the evidence of this witness is taken into consideration, then it appears that none of the person of Laxmipur was present at the time of occurrence. The charge of abduction has been supported but participation of the appellants has not been stated by him.

9. The informant (P.W. 9) in his evidence has stated that on 29.3.2003 at 8.00 A.M. he received a telephonic message from a person who claimed himself to be Runi Yadav who told that informant's father was in his possession and he will have to shed Rs. 15,00000/- for securing his release. P.W. 11 Pramod Kumar, brother of the informant, has also received the same message. Again this witness has stated that on 1.4.2003 phone calls came and the callers claimed themselves to be Ganesh Yadav and Runi Yadav. Again the demand of amount was made but the amount was slashed down to Rs. 5,00000/- . On 4.4.2003 another phone call came which was picked up by witness Pramod Kumar and callers claimed themselves to be Awadhesh Yadav and Sheoji Yadav. Callers told that the informant's father would be rescued by Lalu Sah and Ganesh Yadav after payment of Rs. 5,00000/-. Again this witness has stated that Jiut Sah came at 10.00 P.M. and demanded Rs. 50,000/- immediately and rest amount Rs. 4,50,000/- was to be paid later on. This witness has stated that P.W. 10 Shyam Narayan and P.W. 3 Beyas Prasad who went to search his father in Diara told that they met there with five criminals and Ganesh Yadav and Lalu Sah were amongst them and one of them demanded Rs. 15 lacs and in the way of returning one person met them who told that he was uncle of Runi Yadav and if Rs. 5,00000/- will be paid, the victim will be released. According to this witness, on various dates, demands were made but the amount was not given. In course of investigation, a piece of cloth namely, gamchhi which was being used by the informant's father was detected by the witnesses. So it was suspected that the informant's father might have been killed.

10. P.W. 1 Manish Kumar alias Bhola who is son of the victim Krishna Lal Sah stated that he got information about the abduction of his father through P.W. 2 Bholi Rai. According to him, in course of search, while this witness was returning

from Bazmara Sareh after searching his father, accused Awadhesh Rai and Sheoji Rai met him and demanded Rs. 10 to 15 lacs but stated that after payment of Rs. 5 lacs the matter would be settled with Ganesh Yadav and Lalu Sah. This witness agreed to pay Rs. 25,000/-. Then amount of Rs. 5 lacs was insisted. This witness has stated that on 4.4.2003 Awadhesh Rai and Sheoji Rai contacted on telephone and again demand was made. In course of search, green towel was found buried in the earth but some part thereof was on the surface. The cattlemen told that Sipahijee has been killed and dead body has made to disappear. Therefore, P.W. 1 suspected that his father has been killed by the towel wrapped round his neck. In cross-examination, suggestion was made to him that he has admitted before the Investigating Officer that accused Santosh Prasad has some hand in the kidnapping but at the time of occurrence, said Santosh Prasad was having a grossary shop near the house of P.W. 1. He has further stated that he had not gone to Malahi Diara, rather his brother and others had gone there. He received the towel. According to this witness, accused Santosh was having 8-10 shops near the place of occurrence facing south. Accused Jiut Sah and Lallu Sah were also having shops there. The shop-keepers namely, Rajendra, Rajbanchi, Jiut, Lalu, Lalbabu, cloth seller and Sakaldeo are the residents of village Laxmipur. According to this witness, he has not seen the abduction or kidnapping and he got information about the occurrence only through P.W. 2.

11. P.W. 3 Beyas Prasad is a relative of the victim and he is father-in-law of the sister of the victim. He has supported the demand of ransom so made. The victim was not returned and suspectedly he was killed. This witness has stated that other witnesses are also hear-say and only witness on the point of kidnapping is P.W. 2 Bholi Rai.

12. P.W. 12 is Investigating Officer who has inspected the place of occurrence and had tried to recover the victim in the night of the occurrence but could not succeed. He further stated that when the informant and other prosecution witnesses met him, their statements were recorded. Officer-in-charge of Malahi police station had arrested Runi Yadav in Paharpur P.S. Case No. 7 of 2002 and took his confessional statement. On his confession, the house of Runi Yadav was raided where Harendra Yadav and Rajendra Sahani were arrested. In paragraph 45 of his evidence, this witness has stated that P.W. 10 has stated before him about recovery of towel of the victim. There is consistent evidence that demand of ransom was made by different telephones but the Investigating Officer has taken no steps to obtain the chart of the telephones from which demand of ransom was made. P.W. 13 Uday Singh has identified only S.D. Entry No. 299 dated 16.6.2003.

13. It has been argued on behalf of the appellants that there is only evidence of P.W. 2 who has seen the occurrence. He is a resident of village Laxmipur and he has stated in his evidence that he knows all the residents of Laxmipur. In this case, except appellant No. 5, all the appellants are residents of village Laxmipur.

P.W. 2 could not claim that he has seen any person of Laxmipur village and he has not identified any of the accused. Therefore, I am of the view that the appellants were not recognized by any of the witness. The trial court after considering the evidences produced on behalf of the prosecution and the defence has disbelieved the prosecution of the appellants u/s 302 of the Indian penal Code but order of conviction has been passed mainly on the ground that the appellants had demanded ransom and kidnapping has become an industries.

14. Learned Additional Public Prosecutor assisted by learned Counsel appearing for the informant has argued that the factum of kidnapping and participation of the appellants have been proved because demand of ransom through telephone and person was made but after scrutinizing the evidences on record it is clear that that neither numbers of the telephone have been given nor the Investigating Officer has made any investigation on this point. Therefore, on such shaky evidences, I am of the view that the appellants could not be held to be guilty of the charges. Once doubt is created in the prosecution version, then the benefit of that goes to the accused but in this case it has gone in favour of the prosecution on the presumption that kidnapping has become an industry.

15. After considering the entire evidences on record and after hearing learned Counsel appearing for the parties, I am of the view that the prosecution has not been able to prove the charges against the appellants beyond the shadow of all reasonable doubts and as such they deserve to be acquitted.

16. In the result, this appeal is allowed and the judgment of conviction and order of sentence are set aside. The above named appellants are acquitted of the charges. Appellants Jiut Sah, Lalu Sah alias Binod Sah and Bhikhar Yadav are discharged from liabilities of their bail bonds. Appellants Sheoji Rai, Awadhesh Rai and Ganesh Yadav, who are reported to be in custody, are directed to be released forthwith, if not required in any other case.

Dinesh Kuamr Singh, J.

17. I agree.