
(2016) 06 AHC CK 0023
In the Allahabad High Court
Case No : Jail Appeal No. 4916 of 2015

Smt. Seema

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 13-06-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 374
Penal Code, 1860 (IPC) — Section 363, 364

Citation : (2016) 96 ACrC 95 : (2016) 5 ALLJ 328 : (2016) 4 CriCC 119 : (2017) 1 Crimes 524

Hon'ble Judges : Sudhir Kumar Saxena and Alok Kumar Mukherjee, JJ.

Bench : Division Bench

Advocate : From Jail, Rahul Mishra, A.C, for the Appellant; A.G.A, for the Respondent

Final Decision : Allowed

Judgement

1. This appeal filed from jail under Section 374 Cr.P.C. is directed against the judgement and order dated 20.10.2014 passed by Additional Sessions Judge, Court, No.9, Ghaziabad in S.T. No. 480 of 2012 (State v. Seema) convicting appellant under Sections 363/364 IPC and sentencing her with maximum sentence of life imprisonment in addition to fine stipulated therein.

2. We have heard Sri Rahul Mishra, Amicus Curiae and A.G.A.

3. Briefly stated prosecution case is that FIR was lodged by Laxman on 11.12.2011 alleging that his minor son Ashish has been kidnapped by Seema on 26.11.2011. Police had arrested accused as well as her husband. Senior Superintendent of Police directed police to register FIR, recover child and assigned intense interrogation to a lady sub-inspector. Consequently, Case Crime No. 1348 of 2011 was registered under Sections 363/364 IPC and after investigation, charge-sheet was submitted against the appellant and her husband Mahesh on 10.3.2012. Thereafter cognizance was taken on 17.3.2012. Charge was framed on 29.5.2012. Accused did not plead guilty and claimed trial.

4. File of accused Mahesh was separated.

5. Prosecution examined as many as six witnesses. In the statement under Section 313 Cr.P.C., appellant stated that she did not kidnap the child. No evidence was led in defence. Trial court after considering the above material convicted the appellant under Sections 363 IPC and sentenced her with seven years R.I. in addition to fine of Rs. 10,000/- of payment and in default of fine one year S.I. and under Section 364 IPC she has been further sentenced with life imprisonment in addition to fine of Rs. 20,000/- and in default two years S.I. Both sentences were to run concurrently.

6. In the grounds of appeal, it is mentioned that FIR was delayed, child was not recovered from her possession and there is no cogent evidence against her. Mother of the child has falsely implicated the appellant showing the kidnapping of the child by her. Recovery of child from husband was also wrongly shown etc.

7. From the record, it is apparent that occurrence had taken place on 26.11.2011. FIR was lodged at the intervention of Superintendent of Police on 11.12.2011. In the FIR, there is no mention of any eyewitness. However before trial court, Laxman, informant, was examined as PW-2 who stated in the examination-in-chief that Raju and Tarawati had informed him that they saw Seema taking away the child. It is also further stated that they caught Seema and Mahesh. In the cross-examination, it is stated that Raju is not related to him nor Mahesh is related to him. Seema was arrested from Madhya Pradesh from her sister's residence. Raju, rickshaw driver is living in the neighbourhood. Report was lodged after 2-3 days of the incident.

8. Smt. Rani wife of Laxman Singh was examined as PW-3 who stated that she was washing clothes and child was playing nearby. On that day, Seema came to her residence 2-3 times and when she came back she did not find her child who was taken away by Seema. Tara and Raju had seen Seema taking away the child. She met Seema after 15 days in Phadkhade. In the cross-examination, she denied the suggestion that Mahesh was her brother and Seema was second wife of Mahesh. She did not see Seema earlier. She came to know about Seema when they were searching her child. Tara and Raju told her name. When child went missing he was playing at the distance of 20-25 steps and she came to know about the child's absence at 5.00 P.M. in the evening. Husband had come for lunch at 1.00 P.M. She had gone to police-station at 6.00 P.M. and the police recorded her statement. Alleged eye-witness Tarawati could not be examined as she was reported to be dead.

9. Raju was examined as P.W.1 who stated that on the day of occurrence, he was working as labour at the construction site of one Neeraj. At 1.00 P.M. during lunch, he saw a lady with a child in the lap going towards the main road. Child was aged about 1? to 2 years. Child was playing near hutment and the lady had picked up the child from there. He along with others went to search the child but could not find. Mahesh, husband of that lady, who was filtering sand there, was

apprehended by them and was asked to make available the missing child but thereafter Mahesh ran away. In the court, witness identified accused Seema. In the cross-examination, he states that he belongs to Chhatarpur of Madhya Pradesh. He had known about Mahesh, 5-6 days ago. He was residing in Rambagh colony. He did not know the name of the wife of Mahesh but he knew Laxman because he belonged to his native village. Again he told that he did not know Laxman. He came to know about Laxman on the day of occurrence. He knew Seema for the last 2-3 days of the occurrence. Seema did not work but her husband Mahesh used to come to work. He never saw Seema working there and also where she resided. Mother of the child told him around 1.00 P.M. that child had gone missing thereafter search work was started. He does not drive rickshaw. He denied the statement under Section 161 Cr.P.C., in which he stated being rickshaw driver. He admitted his relationship with Laxman.

10. PW-4 is constable Satyendra Kumar, who proved chick FIR.

11. P.W.-5 Chandrasen Singh, I.O. said that he went to bus-stand and railway station but child could not be found. On 19.12.2011, he arrested appellant Seema and her husband Mahesh from Vijay Nagar area.

12. Investigation was transferred on 24.11.2012 to Ramesh Chandra Bharti, SSI. The witness denied the suggestion of arrest from Punjab and he wrongly shown the arrest of Seema from Noida.

13. Ramesh Chandra Bharti, I.O. was examined as P.W.6, who submitted charge-sheet on 10.3.2012. He did not collect any further material evidence except continuing search operation with no result.

14. From the above, it is apparent that prosecution rests upon sole testimony of Raju P.W.-1 who is said to have witnessed the occurrence. Rest witnesses P.W.2 Laxman and P.W.3 Rani are giving hearsay evidence, Laxman and Rani are not eye witness. Submission is that sole testimony of Raju was not sufficient to warrant conviction in this case. It is settled law that sole testimony can form the basis for conviction if it receives corroboration from the independent witnesses and other sources.

15. A careful perusal of the statements will show that there are major contradictions. It is stated that Raju is said to be an eye-witness. Site-plan is absolutely silent about Neeraj's house from where the witness had seen the incident of alleged kidnapping. It is stated by Raju that mother of the child had told him about missing child at 1.00 P.M., while she herself came to know about the child's absence at 5.00 P.M. Initially, he disowns relationship with Laxman but in later part of his cross-examination he discloses relationship with Laxman. He denies having driven rickshaw but when Laxman was cross-examined he specifically stated that Raju carries goods by rickshaw. Laxman denies his relationship with Raju and he also stated that at lunch he came to know about the missing child which is contrary to the statement of his wife Rani. According to police, Seema was arrested from Noida but according to Laxman Singh, she was

arrested from Madhya Pradesh from her sister's house. Although Raju claims relationship with Laxman through his native village but he alleged that he has seen for the first time Laxman and his wife on the date of occurrence. He had never seen Seema and others before the date of occurrence and also did not know about their residence.

16. Similarly, site-plan does not show the place from where the sole witness had seen the incident of child lifting. Raju did not know Laxman, he came to know about Laxman and Rani on the day of occurrence. He does not reside in neighbourhood. His name is not mentioned in the FIR as eye witness and there is stark contradiction in the testimony regarding his job. According to Laxman, he is a rickshaw puller and according to witness he is a labourer and does not drive rickshaw. In these circumstances, testimony of Raju does not inspire any confidence.

17. Moreover, according to Laxman, Seema was recovered from Madhya Pradesh but according to the police, Seema was arrested from Noida. FIR was lodged after 15 days of the alleged incident but there is no explanation of this inordinate delay in the FIR or in the statement recorded before the court. In the FIR, it is stated that police had arrested Seema and her husband before lodging of FIR but according to I.O., she was arrested on 19.12.2011 much after filing of FIR. Further neither any arrest memo was prepared nor was proved by the prosecution. Similarly, neither the child nor his corpus was recovered from the possession of the appellant. It is clear that prosecution has not come up with clean hands. Since conviction has been recorded on the sole testimony of Raju which is not found to be wholly reliable or trustworthy rather appears to be a got up witness and there being no other evidence, we are of the clear view that prosecution has failed to prove its case against the accused beyond reasonable doubt and, therefore, appeal deserves to be allowed.

18. Jail appeal is allowed. Judgement and order dated 20.10.2014 are set aside. Appellant is acquitted of the charges under Sections 363/364 IPC. She is directed to be set free unless wanted in any other case.

19. Record be sent back.

20. While concluding, we wish to notice the competence and alacrity of Amicus Curiae who argued the appeal in best possible manner. In this case, he will be paid a special fee of Rs. 5,000/-.