
(2018) 04 JH CK 0029

In the Jharkhand High Court

Case No : Criminal Appeal (D.B.) No. 1566, 1617 of 2006, 495 of 2007

VINAY BHAGAT ?AND OTHER

APPELLANT

Vs

STATE OF JHARKHAND

RESPONDENT

Date of Decision : 10-04-2018

Acts Referred:

Indian Penal? Code, 1860 — Section 34, 363, 364A

Citation : (2018) 04 JH CK 0029

Hon'ble Judges : H.C. Mishra, J;B.B. Manglamurti, J

Bench : Division Bench

Advocate : A.K. Sahani, Ajit Kumar, B.M. Tripathy, K.S. Nanda, Nutan Sharma, Nilesh Kumar, Avishek Prasad, Krishna Shankar

Final Decision : Disposed Off

Judgement

1.Â As all these three appeals arise out of the same impugned Judgment, they are heard together and are being disposed of by this common

Judgment.

2. Heard learned counsels for the appellants and learned counsel for the State.

3. The appellants are aggrieved by the Judgment of conviction dated 25th September, 2006 and Order of sentence dated 27th September, 2006, passed

by the learned Additional Sessions Judge-II, Gumla, in Sessions Trial No. 261 of 2005, whereby, the appellants have been found guilty and convicted

for the offence under Sections 364-A / 34 of the Indian Penal Code. Upon hearing on the point of sentence, all the three appellants have been

sentenced to undergo R.I. for life and fine of Rs.5000/- each for the said offence.

4. The prosecution case was instituted on the basis of the statement of the informant Gopal Prasad Sahu, the uncle of the victim child Vishnu Kumar,

aged about six years, recorded on 6.9.2005, at Ghaghra Police Station, stating that on the same day, while the informant was at his shop, one

Budeshwar Oraon, who was earlier working as the driver of the truck of the informant, came and informed him that two persons had kidnapped a

child on a motorcycle and they had gone towards village Dhobni. One person had concealed himself in the bushes near the village Dhobni with the

child and other accused had gone on the motorcycle towards the said village, whereupon, the villagers got suspicious and they started searching in the

bushes. The accused, who was concealing in bushes with the child, tried to flee away, but he was apprehended by the villagers and he disclosed his

name as Vijay Oraon, and he also confessed that he, along with other accused had kidnapped the boy, and they would have freed the child after

realising money from his father. He disclosed the name of the other accused as Vinay Bhagat. The villagers tried to search Vinay Bhagat also, but he

managed to flee away, leaving behind his motorcycle, which was found by the villagers. The kidnapped child was identified to be the nephew of the

informant. It was also informed that Vijay Oraon and the child were kept confined by the villagers. On the basis of the statement of the informant,

Ghaghra P.S. Case No.56 of 2005, corresponding to G.R. No.592 of 2005, was instituted for the offence under Sections 364-A / 34 of the Indian

Penal Code, against the named accused Vijay Oraon and Vinay Bhagat, and investigation was taken up. After investigation, the police submitted the

charge-sheet against these three appellants.Â Â

5. After commitment of the case to the Court of Session, charge was framed against all these three appellants for the offence under Sections 364-A /

34 of the Indian Penal Code, and upon the accused persons' pleading not guilty and claiming to be tried, they were put to trial. In course of trial,

thirteen witnesses were examined by the prosecution, including the I.O. of the case. Out of the material witnesses examined, P.W.-2 Lohra Oraon,

P.W.-3 Budeshwar Oraon, who, according to the FIR, had informed the informant about the occurrence, P.W.-8 Mahto Oraon, P.W.-9 Jubia Oraon,

who was also a witness to the seizure list of the motorcycle, and P.W.-10 Ugrasen Singh, have turned hostile and have not supported the prosecution

case at all.Â

6. The prosecution case is supported by P.W.-1 Balak Ram Mochi, P.W.-4 Lal

Surendra Nath Shahdeo, P.W.-5 Gopal Prasad Sahu, the informant and the uncle of the victim boy, P.W.-6 Dhan Kunwar Sahu and P.W.-7 Om Prakash Sahu, the father of the victim boy. From the evidence of these witnesses it is apparent that P.W.-5 Gopal Prasad Sahu, the informant and his brother P.W.-7 Om Prakash Sahu, the uncle and the father of the victim boy, were informed about the kidnapping of the child by P.W.-3 Budeshwar Oraon, who had turned hostile and had not supported the prosecution case at all. According to the evidence of the witnesses supporting the prosecution case, the accused Vijay Oraon was apprehended by the villagers along with the child, and it was this accused who had made an extra-judicial confession before the villagers that he had kidnapped the child along with Vinay Bhagat and he had also disclosed that the offence was committed at the behest of the accused Ghanshyam Singh for ransom. PW-1 Balak Ram Mochi, who is a resident of village Sahijana, has stated that the accused Vinay Bhagat was also apprehended by his co-villagers after a chase, and in his presence he had also made an extra-judicial confession about the occurrence, but he has not identified Vinay Bhagat in the Court, rather, he has identified Vijay Oraon to be the person who was apprehended by his co-villagers. However, the fact remains that in the evidence of PW-12 Surendra Prasad Singh, who is the I.O. of the case, it has come that the accused Vinay Bhagat was also apprehended by the villagers at village Sahijana, and he was produced before him and he took him into custody, and his confessional statement was recorded by him, which he has proved and the same was marked as Ext.-6. He has proved the statement of the informant, to be in his pen and signature, which was marked Ext.-3. He has also proved the formal F.I.R., which was marked Ext.-4, and the seizure list of seizing the motorcycle, which was marked Ext.-5. There is, however, nothing in his evidence to indicate about the ownership of the motorcycle. The motorcycle which was seized by the police had been produced in the Court by PW-13 Rajendra Pandey, and the same was marked material Ext.-I.

7. PW-11 Vishnu Kumar is the victim boy, the child witness, who has identified only the accused Vijay Oraon to be the person who had kidnapped him. He has not identified any other accused in the Court.Â

8. On the basis of the evidence on record, it is thus apparent, that it was the

accused Vijay Oraon who was apprehended by the villagers along with the kidnapped child, and the kidnapped child has also identified only this accused in the Court. He has not identified the other accused persons, not even the accused Vinay Bhagat. The other two accused Vinay Bhagat and Ghanshyam Singh have been made accused only on the basis of the extra-judicial confession of Vijay Oraon and the confessional statement of Vinay Bhagat, recorded by the police. Though it is stated that accused Vinay Bhagat was apprehended by the villagers, but the fact remains that he was not apprehended along with the kidnapped child and the child has not identified this accused in the Court. We are of the considered view that the conviction and sentence of the appellants Vinay Bhagat and Ghanshyam Singh cannot be sustained in the eyes of law, in view of the fact that there is nothing against these appellants except the extra-judicial confession and the confessional statement.

9. So far as the appellant Vijay Oraon is concerned, learned counsel for this appellant has submitted that against this appellant also, no offence can be said to be made under Section 364-A of the Indian Penal Code, in as much as, there is no evidence to show that there was any threat to cause the death or hurt to the victim boy and there was not even any demand for ransom for release of the victim boy. Learned counsel submitted that in absence of such evidence, the offence, if any, can best be said to be made out only under Section 363 of the Indian Penal Code, for which the maximum sentence prescribed is seven years. Learned counsel has pointed out from the LCR that this appellant was remanded in this case on 8.9.2005 and he remained throughout in custody, until he has been granted bail by this Court by order dated 20.11.2013, and as such, he has remained in custody for more than the sentence prescribed for the offence under Section 363 of the Indian Penal Code. Learned counsel accordingly, submitted that the accused Vijay Oraon has sufficiently been punished for the offence, if any committed by him.

10. Learned counsel for the State, on the other hand, has opposed the prayer and has submitted that the appellant Vijay Oraon had been apprehended by the villagers along with the child and accordingly, his conviction and sentence passed by the Trial Court below suffers with no illegality.

11. Having heard learned counsels for both the sides and upon going through the

record, we find that so far as accused Vijay Oraon is concerned, the evidence is there on the record that he was apprehended by the villagers along with the child, which fact is also proved by the I.O. of the case, PW-12 Surendra Prasad Singh. However, there is no evidence on record that any ransom was ever demanded for release of the child, or that the child was put under threat of death or any hurt, or that any hurt was caused to the child.

Section 364-A of the Indian Penal Code reads as follows :-

364-A. Kidnapping for ransom, etc. "Whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction, and threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt, or causes hurt or death to such person in order to compel the Government or any foreign State or international intergovernmental organisation or any other person to do or abstain from doing any act or to pay a ransom, shall be punishable with death, or imprisonment for life, and shall also be liable to fine."

A plain reading of Section 364-A of the Indian Penal code shows that in absence of any evidence that the kidnapped child was under the threat to cause death or hurt, or in absence of the evidence that the conduct of the accused gave rise to a reasonable apprehension that the kidnapped child could be put to death or hurt, or in absence of the evidence that any hurt was caused to the child, the offence under Section 364-A of the Indian Penal Code cannot be said to be made out against the accused Vijay Oraon. Indeed there is no evidence of any specific demand of ransom also in the case. On the basis of the evidence on record, the offence is clearly made out only under Section 363 of the Indian Penal Code, for which the maximum sentence prescribed is seven years only, and fine. The appellant Vijay Oraon has already remained in custody for more than eight years.

12. So far as the appellants Vinay Bhagat and Ghanshyam Singh are concerned, we have already held that their conviction and sentence passed by the Trial Court below cannot be sustained in the eyes of law, in view of the fact that there is nothing against them except the confessional statements.

13. For the foregoing reasons, the impugned Judgment of conviction dated 25.09.2006 and Order of sentence dated 27.09.2006 passed by learned

Additional Sessions Judge-II, Gumla, in S.T. No. 261 of 2005, so far they relate to the appellants Vinay Bhagat and Ghanshyam Singh, are hereby, set

aside. Both these appellants are found not guilty and they are acquitted of the charge. Accused Vinay Bhagat is already in custody, undergoing the

sentence. Let him be released and set at liberty forthwith, if his detention is not required in any other case. The accused Ghanshyam Singh is on bail,

and he is discharged from the liabilities of his bail bond.

14. The aforesaid Judgment of conviction, so far as it relates to the accused appellant Vijay Oraon, is hereby, modified to the extent that the appellant

Vijay Oraon is convicted for the offence under Section 363 of the Indian Penal Code. He is acquitted of the charge under Section 364-A of the Indian

Penal Code. The Order of sentence passed by the Trial Court against this appellant is also set aside, and he is sentenced to undergo R.I. for seven

years and a fine of Rs. 5,000/-. In default in payment of fine, he is directed to undergo S.I. for three months. As we find from the record that this

appellant is on bail, after serving out more than the period of sentence, this appellant is also hereby, discharged from the liabilities of his bail bond.

15. In view of the discussions made above, Cr. Appeal (DB) No. 1566 of 2006 and Cr. Appeal (DB) No.1617 of 2006, are accordingly, allowed,

whereas, Cr. Appeal (DB) No.495 of 2007 is dismissed with the modification in the Judgment of conviction and Order of sentence as aforesaid. Let

the Lower Court Records be sent back to the Court concerned forthwith, along with a copy of this Judgment.