

Shanti Devi and ors Vs. State of Bihar

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Court : Patna

Decided On : Sep-11-2013

Appellant : Shanti Devi and ors

Respondent : State of Bihar

Judgement :

IN THE HIGH COURT OF JUDICATURE AT PATNA Criminal Appeal (SJ) No.221
of 1996

===== 1.
Shanti Devi, Wife of Saukhi Singh (the appeal stands abated with respect to her
vide order dated 04.09.2013) 2. Parsuram Singh, Son of Ganga Bishun Singh 3.
Dilip Singh, Son of Saukhi Singh 4. Devendra Singh, Son of Shital Singh All are
resident of Kesauri, P.S. Pakri Warawan, District Nawada. Appellant/s
Versus The State of Bihar Respondent/s

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Appearance : For the Appellant/s : Mr. Arun Kumar Arun, Advocate Mr. Siyaram
Pandey, Advocate For the State : Mr. Binod Bihari Singh, Additional Public
Prosecutor

=====

CORAM: HONOURABLE MR. JUSTICE AKHILESH CHANDRA C.A.V.

JUDGMENT

Date:

11. 09.2013 All the appellants have preferred this appeal against their conviction recorded under Section 364 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for 5 years and the lady appellant no. 1, namely, Shanti Devi (who is now dead and the appeal with respect to her has already been abated vide order dated 04.09.2013) was sentenced to undergo rigorous imprisonment for 3 years as awarded by learned 2nd Additional Patna High Court CR. APP (SJ) No.221 of 1996 dt.11-09-2013 2 Sessions Judge, Nawadah on 20th Day of August, 1996 in Sessions Trial No. 28 of 1989 / 57 of 1991 arising out of Pakribarawan P.S. Case No. 72 of 1987.

2. The prosecution case as reveal from Exhibit-3, the written application of one Rajendra Prasad Singh @ Kaviji (P.W.7) dated 12.09.1997 is that a day before i.e. on 11.09.1987 when he visited the house of Radhika Devi (P.W.

5) i.e. his aunt-in-law (Fufuya Sas), aged about 50 - 55 years being issueless residing alone having 10 - 12 acres of land besides cash and other articles, found her missing. On query learnt through co-villagers, Devendra Singh, Ramadhin Singh, Ishlok Singh (P.W.

1) and Most. Siyawati Kunyar (not examined) that the appellants besides one Prabas Singh on 01.09.1987 (Tuesday) at about 10.00 a.m. took her for Deoghar, but on 03.09.1987 all, except the victim Radhika Devi, returned and at about 4.00 p.m. after unlocking the door of her (victim) house took away grains and other articles and he (informant) raised suspicion of her abduction, confinement and killing. He further enquired at Registry Office, Nawadah, where he learnt from Nawal Kishore Singh and Ramashray Singh that on 02.09.1987 the miscreants had kept the victim in senseless state near the Registry Office and her thumb impression was obtained on some papers, on basis whereof, the deceased appellant, Shanti Patna High Court CR. APP (SJ) No.221 of 1996 dt.11-09-2013 3 Devi accepted execution of some documents before the Registrar, but thumb impression etc. were being taken out of Registry Office with the help of one Surendra an employee of the Registry Office.

3. On such information the case was instituted and during investigation the victim was recovered from the house of one of the appellants (appellant no. 3), namely,

Dilip Singh and finally charge-sheet for the offence under Sections 467, 468, 364, 368, 420 and 380 of the Indian Penal Code was submitted against the First Information Report named persons besides one Sudama Singh and after commitment of the case trial commenced for the offence under Section 364 of the Indian Penal Code during which the prosecution examined altogether 8 witnesses besides producing following documents :- Exhibit -1 : Signature of Ramchandra Singh on seizure list. Exhibit -1/1 : Signature of Ambika Singh on seizure list. Exhibit -2 : Formal F.I.R. Exhibit -X : Thumb impression of witness Radhika Devi under Section 164 of the Cr.P.C. for identification. Exhibit - 3 : Complete Fardbeyan. No oral or documentary evidence is produced on behalf of the defence, who simply denied their complicity in the case and the trial court on consideration of the above materials while acquitting Sudama Singh convicted and sentenced the appellants in the Patna High Court CR. APP (SJ) No.221 of 1996 dt.11-09-2013 4 manner aforestated giving rise to instant appeal.

4. It was contended by learned counsel appearing on behalf of the appellants that the case has falsely been instituted by the informant, who himself had greedy eyes over the lands of the victim and just to overcome the valid execution of transfer deeds by the lady after taking her in his control got the case instituted. The witnesses examined rather none else than the persons had inimical terms with the appellants and on material points contradicted each other. On the other hand, the learned Additional Public Prosecutor supported the findings on the ground mentioned in the judgment and also submitted that the recovery of the victim, who was tied with cot, roughly ten days after institution of the case from the house of appellant no. 3, Dilip Singh by the Investigating Officer (P.W.

8) itself is sufficient to indicate the wrongs being committed with her and apart from other witnesses she also has not only in her statement recorded under Section 164 Code of Criminal Procedure, which was recorded as her dying declaration taking into consideration her pitiable condition at the relevant time, but also as P.W. 5 has consistently stated about the miseries faced by her, consequently, no interference is required in the finding of the court below.

5. Out of total 8 prosecution witnesses, P.W. 1, Ishlok Patna High Court CR. APP (SJ) No.221 of 1996 dt.11-09-2013 5 Singh, has come to say about the persuasion made by the appellants and their associates upon the victim to go to Deoghar and on return without her stated about her being hospitalized at Nawadah for treatment. In cross-examination, this witness admits subsequently he could learn that some documents have been obtained from her during the period of captivity by the appellants. P.W. 2, Ramchandra @ Chandra Singh, after corroborating the statement of P.W. 1 has said that the appellants after unlocking the door of the house of the victim took away the belongings and on 28.09.1987 the Investigating Officer (P.W.

8) recovered her from the house of appellant no. 3, Dilip Singh after untying her from the cot and he further proved Exhibits-1 & 1/1. In cross-examination, he admits not giving any information to the police or the informant about the earlier incidents and, in paragraphs-15 & 16, he says that after initial disappearance he could see her in senseless state at the time of recovery and he also put his signature on the papers indicating her recovery.

6. P.W. 3, Manoj Kumar, has also corroborated the statements of P.W. 1 as well as of P.W. 2, but not on the point of recovery of the victim. P.W. 4, Mohammad Hasan Imam, is an advocate clerk simply proved Exhibit-2. P.W. 6, Umesh Singh, has simply said that he is not witness in the document said to be Patna High Court CR. APP (SJ) No.221 of 1996 dt.11-09-2013 6 executed by the victim and he has also sworn in affidavit.

7. P.W. 7, Rajendra Prasad Singh, is the informant has stated the prosecution version and proved Exhibit-3 and further stated about the recovery of the victim after being untied from the house of appellant no. 3, Dilip Singh. In cross-examination, he admits that no such occurrence was taken place in his presence and the miscreants are known to him since before, but denies having any information since before about the initial occurrence and further asserts that the victim herself makes Pairvi of her cases present and civil and deny the suggestion valid and voluntarily transfers of land by the victim in favour of the appellants about which he himself had greedy eyes.

8. P.W. 5, Radhika Devi, is the victim has stated about the persuasion made upon her by the appellants and their associates to go to Deoghar. Meanwhile, P.W. 3, Manoj Singh and P.W. 1, Ishlok Singh, also arrived and further stated about arriving at Nawadah to heir the vehicle for Deoghar, where she was provided meal and, thereafter, on felling restlessness immediately two tablets were also given to her, but thereafter what happened she was unable to know. However, after 10 - 15 days she could be recovered from the house of appellant no. 3, Dilip Singh with aid of police. Thereafter, she was hospitalized, where her statement Patna High Court CR. APP (SJ) No.221 of 1996 dt.11-09-2013 7 was also recorded and when she came back found her belongings missing. Her statement recorded under Section 164 of the Code of Criminal Procedure is marked as Exhibit-X. In cross-examination, she denies transferring any land to appellant no. 2, Parsuram Singh, but admits about going on civil litigation and further informing occasionally doing the needful on her behalf. She further denies about receiving any money against such transfer and further she said that roughly after a month of her taking away in the garb of going to Deoghar she was hospitalized. In paragraph- 11, she states that for 20 - 25 days she was kept confined in a room in the house of appellant no. 3, Dilip Singh and for some time she could regain senses, but is not in a position to raise any alarm. She further says that due to her being not in senses she is unable to say as to whether she was ever assaulted or not. In reply to courts question, she asserts that none of the appellants is related with her, though, they are co-villager. She is issueless and was initially dragged, but ultimately, locked her house at her own and joined the company of the appellants to go to Deoghar.

9. P.W. 8, Jai Ram Sharma, is the Investigating Officer, who after instituting the Formal First Information Report (Exhibit-2) basis of Exhibit-3 inspected the place of occurrence and recovered the victim (P.W.

5) from the house of appellant no. Patna High Court CR. APP (SJ) No.221 of 1996 dt.11-09-201

3. Dilip Singh, where her hands and legs were tied with cot. He also inspected the residential house of the victim and found the articles missing. He further visited Registry Office, where two deeds bearing nos. 15773 and 11649 respectively

dated 20.07.1987 and 15.06.1987 were executed by the victim and after concluding the investigation he submitted charge-sheet. In cross-examination in paragraphs- 4 & 5, he has not mentioned the details of the house from where the victim was recovered. He himself untagged the victim, but found no injury on her hands and legs and asked about the days for which she was tagged there. He further send her to hospital on 28.09.1987, but received no injury report or prescriptions/bed-head tickets. Hawaldar Hasnain had informed about precarious condition of the victim, but no such statement is recorded. He also does not remember as to whether she was referred to Patna or not for treatment.

10. From the materials discussed above, it is evident that the victim lady was persuaded by the appellants to join their company and on that ground she was taken by them and ultimately could be recovered from the house of appellant no. 3, Dilip Singh after substantial lapse of time. During the period of captivity she was not seen by anyone, but at the same time, there appears nothing to indicate any injury sustained by her leading inference of Patna High Court CR. APP (SJ) No.221 of 1996 dt.11-09-2013 9 intention of the appellants to get her killed. They have not left her at any abundant place rather kept confined in a room of their own house and she was, as also stated by herself, being provided with food materials, though, inadequate and she was not being permitted to regain senses for long or raise any alarm, but this alone in absence of any material to show her sustaining any injury (internal or external), it is difficult to attract the offence under Section 364 of the Indian Penal Code, which reads as such :-

364. Kidnapping or abducting in order to murder.- Whoever kidnaps or abducts any person in order that such person may be murdered or may be so disposed of as to be put in danger of being murdered, shall be punished with [imprisonment for life] or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine. But at the same time, taking away the victim and keep her confined for a substantial period attracts an offence under Section 365 of the Indian Penal Code, which reads as such :-

365. Kidnapping or abducting with intent secretly and wrongfully to confine person.- Whoever kidnaps or abducts any person with intent to cause that person

to be secretly and wrongfully confined, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

11. Consequently, the conviction of the surviving appellants is converted from Section 364 of the Indian Penal Code Patna High Court CR. APP (SJ) No.221 of 1996 dt.11-09-2013 10 to Section 365 of the Indian Penal Code and having regard to time lapsed causing mental agony and financial loss besides the period of detention, pre and post trial, the sentence of the surviving appellants nos. 2, 3 & 4 is modified to the sentence, which they have already undergone. With the aforesaid modification in the judgment of conviction and order of sentence passed against the appellants, this appeal is hereby dismissed. (Akhilesh Chandra, J) Praveen-II/-

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