

Pramod Yadav and Others Vs. the State of Bihar

Pramod Yadav and Others Vs. the State of Bihar

SooperKanoon Citation : sooperkanoon.com/1151693

Court : Patna

Decided On : May-08-2014

Judge : Aditya Kumar Trivedi

Appeal No. : Criminal Appeal (SJ) No. 767 of 2013

Appellant : Pramod Yadav and Others

Respondent : The State of Bihar

Judgement :

1. Appellants Naga Yadav @ Nag Yadav, Shyam Babu Yadav @ Shyam Babu and Pramod Yadav have been found guilty for an offence punishable under Section 364/34 of the I.P.C. vide judgment of conviction dated 13.11.2013 and each one has been directed to undergo rigorous imprisonment for ten years as well as fined of Rs. Five thousand in default thereof, to undergo rigorous imprisonment for three months additionally vide order of sentence dated 21.11.2013 by the Ad hoc Additional Sessions Judge-1st, Patna in Sessions Trial no.695 of 2006 have challenged the same under instant appeal.

2. PW-6 Ajay Kumar filed a written report on 11.06.2005 alleging inter alia that he happens to be proprietor of Star Bright Musical Group, wherein Pramod Kumar Yadav was also engaged. Few days ago, he had taken away cash from his office and on account thereof, a case was registered against him. Today i.e. 11.06.2005 at evening hour while was going to Hilsa along with group members and as soon

as the vehicle reached near Didarganj overbridge, Pramod Yadav, Shyam Babu Yadav, Naga Yadav along with 3-4 companions forced his vehicle bearing registration no.BR-1A-0459 moved towards Sonawan Bandh and began to demand money, whereupon they have raised alarm for safety (Bachao-Bachao) over which the persons of the locality assembled and rescued them. They have also chased and during course thereof, Shyam Babu Yadav was apprehended who was assaulted by the villagers and on account thereof, he has sustained injuries.

3. On the basis of the aforesaid written report, Didarganj P.S. Case no.63 of 2005 was registered against Pramod Yadav, Shyam Babu Yadav, Naga Yadav along with 3-4 unknown persons including driver of BR-1A-0459. It is evident from the record that first charge sheet bearing no.93 of 2005 was submitted against Shyam Babu Yadav, Naga Yadav, Somar Bind, Ganauri Yadav keeping the investigation pending against Pramod Yadav. It is evident from the lower court record that on the basis of the aforesaid charge sheet, cognizance was taken and aforesaid persons namely Shyam Babu Yadav, Naga Yadav, Somar Bind, Ganauri Yadav were sent up for trial. On the basis of the commitment Sessions Trial no.695 of 2006 commenced thereupon (present one).

4. It is also evident that subsequently charge sheet no.35 of 2006 was filed against Pramod Yadav alone whereupon, he was also sent up for trial under Sessions Trial No.748 of 2007.

5. After perusal of record of instant Sessions Trial No.695 of 2006, it is evident that vide order dated 19.09.2006, charge was framed against Shyam Babu Yadav, Ganauri Yadav, Naga Yadav and Somar Bind. However, the record also speaks that after passing through different dates on 04.12.2007, again charge was framed and that was only against Ganauri Yadav, Naga Yadav and Shyam Babu Yadav. That means to say, Somar Bind was left out without having any sort of order passed by superior court rescinding order dated 19.09.2006, whereby and whereunder charge was framed against four persons namely Shyam Babu Yadav, Ganauri Yadav, Naga Yadav, Somar Bind.

6. Now, coming to the status of Pramod Kumar Yadav, it is evident from the lower court record of Sessions Trial no.748 of 2007/ 36 of 2007 that charge was framed on 25.09.2007 and then thereafter, vide order dated 10.01.2008 the same was amalgamated with the record of Sessions Trial no.695 of 2006 (present one).

7. It is further evident from the order sheet of Sessions Trial no.695 of 2006 that Ganauri Yadav jumped out resulting cancellation of bail bond and was subsequently declared absconder on account of which vide order dated 25.04.2008, his trial was separated and is presently being proceeded separately under Sessions Trial No.695A of 2006.

8. It is further evident from the subsequent order sheet that Somar Bind also became absent on account thereof, his bail bond was cancelled and issuance of non-bailable warrant of arrest against him was ordered. Subsequently thereof, vide order dated 03.12.2007 his trial was separated and then again on 04.12.2007, charge against Ganauri Yadav, Naga Yadav and Shyam Babu Yadav was framed for an offence punishable under Section 364/34 of the I.P.C. whereunder, they were charged along with Somar Bind vide order dated 19.09.2006. However, from perusal of relevant order sheet, it is evident that separate record was not at all opened for that purpose and this shows an apathetic approach of the learned lower Court towards the proceeding and further acting in mechanical way without appreciating the fact that the events being carried out whether happens to be permissible in the eye of law or not. Amendment of charge is permissible, but re-charging excluding presence of accused is non-permissible. Be that as it may, because of the fact that appellants have not raised any sort of grievance on that very score, hence, the matter is dropped.

9. The defence case as is evident from mode of cross-examination as well as from the statement recorded under Section 313 of the Cr.P.C. is of complete denial of occurrence. It has also been submitted that the prosecution party themselves lifted accused/ appellant Shyam Babu Yadav, who happens to be brother of Pramod Yadav, assaulted him inside the bus and then after taking the police in their collusion, got this case filed with false and frivolous allegation in order to misappropriate the amount so due in lieu of wages for the work done by Pramod

Yadav while being employed under informant (PW-6).

10. In order to substantiate its case, prosecution had examined altogether seven PWs. Out of whom, PW-1 is Santu Kumar, PW-2 is Lal Babu Yadav, PW-3 is Basuki Nath, PW-4 is Saraswati Devi, PW-5 is Rupali Das, PW-6 is Ajay Kumar and PW-7 is Jai Shankar Singh. Prosecution had also exhibited the document as Exhibit-1 signature of informant, Exhibit-2 formal F.I.R., Exhibit-3 written report.

11. It has been submitted on behalf of appellants that the judgment of conviction and sentence recorded by the learned trial court suffered from conjectures and surmises in the background of the fact that the learned trial Court did not opt to consider whether the allegation on its face attracts application of Section 364 of the I.P.C. For the purpose of application of Section 364 of the I.P.C., it has been submitted that there should be kidnapping or abduction for the purpose of murder or should be confined such way to facilitate murder of victim. In the present case, right from inception, it has never been alleged. Even during course of evidence, the witnesses failed to disclose.

12. It has further been submitted that only to give weightage and further exposing the occurrence with severity, some of the witnesses gone to such extent by stating that the appellants have assaulted informant along with others while some have negated. It is also apparent from deposition of the witnesses that they had deflected from their initial version and on account thereof, there happens to be presence of material contradiction affecting upon reliability of their evidence, which is found corroborated by PW-7, the Investigation Officer.

13. It has also been submitted that apprehension of Shyam Babu Yadav by the villagers happens to be totally absurd story in the background of the fact that PW-7, the I.O. had not deposed that appellant Shyam Babu Yadav was ever produced before him by the villagers and if so, by whom. Not only this, there happens to be total absence of villagers during course of investigation as well as during course of trial who could have supported the case of prosecution on this score.

14. It has further been submitted that as per prosecution case, all the appellants including others have boarded in bus. Out of whom, Pramod Yadav was

demanding cash from PW-6, Ajay Kumar, but he never tried to search out any of the occupant what to talk about informant for the purpose of taking the money. It has further been submitted that actually none were present, save and except, Shyam Babu Yadav on the road, who was picked up by the prosecution party, brutally assaulted and then seeing that they will be intercepted by the villagers on account of appellant being local resident got the police in their collusion and then filed written report along with production of appellant Shyam Babu Yadav. Because of the fact that appellants belong to poor illiterate family coming from lower strata of society having no access. Hence, they could not fight against prosecution party who were went upon to digest the hand earning of Pramod Yadav.

15. It has further been submitted that there happens to be inconsistency amongst the evidence of the PWs on each and every material aspect. So, their evidences are fit to be discarded and consequent thereupon, appeal is fit to be allowed.

16. On the other hand, learned Additional Public Prosecutor opposed the prayer and submitted that apart from consistent version of the witnesses, the objective finding of I.O. also confirms the occurrence. Hence, the conviction and sentence recorded by the learned lower court did not attract interference.

17. Right from inception of instant trial, status of appellant Pramod Yadav as an employee and PW-6, informant Ajay Kumar being an employer is admitted along with the fact that on that very account some sort of dispute was persisting since before.

18. From the nature of evidence so adduced, indicates dispute persisting over wages in the background of aforesaid admitted position. Now, the evidence of PWs have to be seen and during course thereof, first of all, evidence of informant (PW-6) is taken first. He had stated that on 11.06.2005 at 7.00 p.m. they were going to Hilsa for performing programme over Tata Maxi. When the vehicle reached at Didarganj overbridge, driver diverted the route and proceeded beneath the overbridge while they have to go through the bridge. They have directed the driver not to go through aforesaid route, but he did not listen and continued in going ahead. After covering some distance, he found Pramod, Naga, Shyam Babu

along with 3-4 persons standing since before. Out of whom, Pramod Yadav had given signal to stop the vehicle. The driver had stopped the vehicle and then Pramod, Shyam Babu and Naga boarded inside the bus and began to demand money. Driver had diverted route towards Sonawan Bandh. They began to raise alarm in their safety. Pramod was asking for money otherwise have threatened to kill. After covering distance upto 10-15 minutes, the vehicle stopped near village where mob assembled, whereupon, all the accused fled away. Out of whom, one was apprehended by villagers who was Shyam Babu. Police also arrived, had enquired from him and then took him along with his mother and Shyam Babu to police station while rests remained at vehicle itself. He had filed written report at police station. Driver fled away and on account thereof, police had taken vehicle to police station. He identified the accused. During cross-examination at para-4, he had admitted that Pramod was working under him since five years. Pramod had not instituted any case rather he had filed case in the year 2005 itself. He had occasion to go to the place of Pramod at least 5-6 times. Rest accused Naga and Shyam Babu is his full brother. They were also known to him on account of Pramod. In para-6, he had stated that bus was hired. He does not know the driver and owner of the vehicle. Police Post is located at Didarganj. They have not informed the police. In para-7, he had stated that they were not medically examined. Accused persons have not snatched money from any occupant who had apprehended Shyam Babu, he was not knowing. Villagers have not apprehended anybody inside the bus. Shyam Babu was arrested near tractor, he had not seen any accused having armed with weapon.

19. PW-4 is Saraswati Devi, mother of informant. She had deposed that on 11.6.2005, she was going to Hilsa along with her son Ajay over 407 Maxi Taxi. Driver had driven the vehicle down the Didarganj over bridge. Having forbidden, driver said that 4-5 male and female were also to board. However, Pramod had given signal and then boarded inside the bus along with 4-5 persons, who indulged in assault as well as engaged in snatching. She was also assaulted. They raised alarm attracting the local inhabitants, who rescued them. Out of them, one was apprehended. Police was informed. Driver fled away, she identified the accused. During cross-examination at para-5, she had also admitted status of Pramod. In para-6, she had stated that 15-20 persons were inside the bus. In

para-7, she had stated that neither she herself nor her son got examined by the doctor. In para-8, she had stated that the driver after stopping the vehicle, again proceeded. About hundred persons have assembled. The house of Pramod was one Lagga ahead, again corrected it by stating that her house lies at Rai Bandh. She is unable to disclose the distance. In para-11, there happens to be contradiction. In para-12, she had admitted that Shyam Babu was assaulted. Again in para-14, she had admitted the status of Pramod Yadav.

20. PW-1 is Santu Kumar. In chief, he had reiterated the version whatsoever been stated by the informant as well as mother of informant with further adding that after coming inside the bus, they have assaulted all of them. They have forcibly diverted the route of the Maxi-Taxi towards Sonawan Bandh. They were demanding money from his organizer. On hue and cry, villagers began to assemble seeing whom, the accused persons began to flee. Out of whom, Shyam Babu was apprehended. The villagers also informed Didarganj P.S., who promptly came at the place of occurrence and rescued. During cross-examination at para-6, he had admitted that Pramod was an employee of Ajay. He had further disclosed that on account of some sort of dispute regarding money, Ajay had instituted a case against Pramod. He had further stated that driver continued to proceed with the vehicle. In para-11, he had further stated that dispute was going on in between Ajay and Accused persons. They have not assaulted any of the members of the group as well as they have not snatched anything from the members of the group including informant. In para-12, he had stated that save and except Ajay, none were assaulted. He had further stated that driver on his own stopped the vehicle. In para-15, he had further stated that the vehicle stopped on account of presence of tractor. In para-18, there happens to be contradiction.

21. PW-2 had also reiterated the same version with an addition that while they were proceeding on Sonawan Bandh, the vehicle stopped on account of brick staked ahead. Thereafter, they raised alarm attracting the villagers, who have apprehended one Shyam Babu as well as also informed the police. Police took away the bus. During cross-examination at para-4, he had admitted that accused persons happen to be resident of Sonawan Bandh. In para-6, he had further shown the Police Out Post near chowk from where a road bifurcate to Sonawan

Bandh. Only hundred meters away from that chowk, Didarganj P.S. lies while bus was proceeding, there was commotion inside the bus. They have said driver to stop vehicle. In para-9, he had stated that none else than Shyam Babu was medically examined. He had further stated that none of the members of the prosecution party had apprehended Shyam Babu. In para-12, he had admitted that Pramod was an employee of Ajay. He was demanding money from Ajay. In para-14, there happens to be contradiction.

22. PW-3 Basuki Nath. During examination-in-chief, he had reiterated the same version. However, he had not identified the accused during his evidence. During cross-examination at para-3, he again reiterated so far factum of identification is concerned. In para-6, he has further stated that only Ajay has sustained injury. In para-7, he had admitted that Pramod had earlier worked under Ajay. He used to come and demand money from Ajay. In para-9, there happens to be contradiction.

23. PW-5 is Rupali Das. She had also stated the prosecution case in similar way. She had identified the accused confining Shyam Babu and Pramod Yadav, but had not identified Naga. During cross-examination at para-9, she had stated that the accused along with members of the group have gone to police station. Accused was apprehended by the villagers. She had seen injury over body of Ajay only. In para-13, 14 and 16, there happens to be contradiction. In para-15, she had admitted presence of Pamod as an employee of Ajay.

24. PW-7 is the I.O., he had stated that on 11.06.2005 at about 7.30 p.m., he received information from public control room that unknown criminals, after kidnapping musical group, were going towards Sonawan Bandh and on account thereof, he had gone to the place where vehicle was parked, arrested the accused, took him to police station, written report was filed on the basis of which F.I.R. was registered also exhibited the same. Took up investigation. Inspected the place of occurrence. The P.O. happens to be Sonawan Bandh where vehicle was parked hundred yards South to the main road. After completing investigation, charge sheet was submitted under Sections 364, 34 of the I.P.C. During cross-examination, he had stated that he had not mentioned the fact in the case diary by whom the accused was assaulted, by whom he was apprehended. He had not

mentioned the fact who have produced the accused before him. He had not enquired regarding owner of vehicle. Vehicle was not seized who had driven the vehicle he had not mentioned the fact. He had not seen mark of violence over body of any body. He had not found brick staked at the Bandh. He had not recorded the statement of locals. He had not taken statement of any police officials posted at Didarganj O.P. Informant had not shown injury. Then at page-7 onward, there happens to be contradiction with regard to witnesses.

25. The informant or his mother including other witnesses have not stated that the vehicle in question was regularly been hired by them and on account thereof, the driver was known to Pramod since before the occurrence. They have further failed to state that the vehicle was booked much prior to the occurrence, so that probability of having been pre-informed by the driver could be inferred. Furthermore, prosecution is also silent over having the appellants pre-known to driver. In likewise manner, the I.O. had not found the bus in disorganized manner. Furthermore, the prosecution had gone by developing the case materially. Story of injury at the hands of accused, however, is not found corroborated by the I.O.

26. In likewise manner, had there been criminal activity at the hands of appellants, then in that event their apprehension at the alleged P.O. by the villagers was improbable in the background of the fact that witnesses have already admitted their house to be at Sonawan Bandh. In likewise manner, presence of tractor had stated by some of the witnesses while staking of brick was the cause for stoppage of vehicle was not at all found during course of inspection of P.O. by the I.O. It is further evident that although there happens to be inconsistent evidence that villagers have apprehended one of the appellants namely Shyam Babu, but surprisingly the police did not care to examine any of them. So, that the prosecution version would have strengthened by having definite presence of an assembly by which the prosecution party were rescued side by side Shyam Babu was apprehended. It is also evident from the deposition of the witnesses that none of the accused were armed with any lethal weapon and had indulged with any of the members of the group. Furthermore, from the evidence available on the record, it is evident that none of the appellants have directed or instructed the driver to change the direction and proceed on Sonawan Bandh thereof, when

appellants have indulged in the act of kidnap. For the purpose of kidnapping or abduction with an intention to kill or to keep the victim in such condition that he could perceive to be killed at least prosecution is required to prove that they were overpowered and were taken to such secluded place to facilitate the act of murder or kidnapping or abduction was for the purpose of murder. None of the PWs have alleged like so. Moreover, from evidence of PW-7, I.O., it is evident that all the PWs have exaggerated their version which goes to root of the case and on account thereof, their evidences have become sketchy.

27. After analyzing the evidence available on the record as discussed above, it looks unsafe to rely thereupon. Consequent thereupon, the judgment of conviction and sentence recorded by the learned trial Court is set aside. Appeal is allowed. Appellants are under custody, hence are directed to be released forthwith if not wanted in any other case.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com