

Anand Kumar @ Munna Vs. State of Bihar

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Court : Patna

Decided On : Jan-24-2008

Judge : Subash Chandra Jha, J.

Acts : Indian Penal Code (IPC) - Sections 34 and 366A

Appeal No. : Criminal Appeal No. 772 of 2006 (SJ)

Appellant : Anand Kumar @ Munna

Respondent : State of Bihar

Advocate for Def. : Satyanarayan Prasad, APP

Advocate for Pet/Ap. : Rana Pratap Singh, Sr. Adv., Prasoon Sinha and Aruni Singh, Adv.

Disposition : Appeal allowed

Judgement :

Subash Chandra Jha, J.

1. The sole appellant Anand Kumar alias Munna, who stood trial for committing offence under Section 366A I.P.C., has been held guilty for the said offence and sentenced to undergo rigorous imprisonment for five years and imposed a fine of rupees three thousand, in default of which to undergo rigorous imprisonment for

another six months in Sessions Trial No. 282/1997/172/2005 by learned Additional Sessions Judge, FTC III, Sitamarhi. He has filed this appeal for setting aside the order and judgment of conviction and sentence dated 4.9.2006.

2. The prosecution case, in short, is that on 5.8.1996 at about 9.30 A.M. Pallabi Priya alias Putul Kumari, aged about 17 years, daughter of the informant, had left her house to attend her tuition classes at Sitamarhi in the coaching institute of Professor Anand Shekhar Singh (P.W. 2) and Professor Sandip Garg (P.W. 1) but did not come back till the evening and, as such, intensive search was made by Baidyanath Thakur, son-in-law of the informant, as also her family members but all in vain, with the result that Baidyanath Thakur lodged a sanha with the police at Mehsil outpost, on the basis of which, station diary entry was made on 6.8.1996. The said Baidyanath Thakur also informed his father-in-law (informant of the case) at Calcutta on telephone and on such information the information Chiranjibi Pd. Singh (P.W. 11) arrived Sitamarhi from Calcutta on the next evening and also made intensive search of his daughter and later on came to know that the appellant Anand Kumar alias Munna once had come with an unknown boy and disclosed his intention in presence of Raghvendra Kumar (P.W. 5) and Dharmendra Tiwari (P.W. 13) to marry Putul Kumari, the victim, daughter of the informant, and also expressed that in case such marriage did not materialize, he would kidnap Putul Kumari.

3. Further case of the prosecution is to this effect that on the night of 20th August, 1996, the accused Munna met informant and demanded a sum of rupees twenty-twentyfive thousand on the assurance that he would bring the victim girl on the condition that she should be married to him, to which the informant agreed and Munna left the place on the pretext of obtaining consent of the parents but thereafter he did not come back. Meanwhile, as further alleged, the appellant Munna also contacted informant on telephone so as to propose marriage with Putul Kumari but on 24.8.1996 while informant was actively engaged in searching his daughter, he saw Munna in the market of Sitamarhi and with the help of his friends and well wishers, they could apprehend Munna and asked about whereabouts of his daughter, before whom the accused appellant Munna confessed his earlier plan to marry daughter of the informant Putul and the plan to

kidnap Putul with assurance that he would produce Putul provided his parents agreed. The informant and his well wishers accompanying the accused Munna proceeded for the residence of Munna so as to meet parents of Munna but they found house of Munna locked, absence of his parents and as such Munna was produced before the Police on 25.8.1996, where written information was furnished by the informant and, accordingly, FIR was drawn. The investigation commenced and ultimately Sitamarhi P.S. case No. 227 of 1996 against the appellant and his parents culminated in submission of chargesheet under Section 366A read with Section 34 of the IPC, on the basis of which cognizance under Section 366A IPC was taken by the learned Chief Judicial Magistrate, Sitamarhi. The case was committed to the court of sessions and ultimately trial commenced and was disposed of by the aforesaid learned Sessions Judge, who held appellant guilty for the aforesaid offence and passed order of sentence, as stated above.

4. In course of trial, 14 witnesses on behalf of the prosecution were examined. Out of them, P.W. 14 Jainath Sah is a formal witness, who proved formal FIR. P.W. 6 Bimlesh Kumar Thakur, P.W. 8 Ram Kishore Chaudhary and P.W. 13 Dharmendra Tiwary have turned hostile, who did not support the prosecution case inspite of the fact that they were cross examined by learned APP.

5. P.W. 1 Sandip Kumar Garg and P.W. 2 Anand Shekhar Singh are the teachers having their coaching institutes and, as alleged, the victim Putul used to attend her classes in their respective coaching institute for her studies but on the relevant date, she did not go there to attend her classes and they are only on the point so far absence of Putul on that particular date, i.e., 5.8.1996 is concerned. They have not stated anything so as to infer as to the reason for which Putul did not attend her classes on that particular date. They are also silent so as to infer proximity of Putul with either of her friends, who were also pursuing their studies or any outsiders including the appellant. Their statement is also silent so far presence of the appellant in and around their institution either on the date of occurrence or before or after the occurrence is concerned. P.Ws. 1 and 2 Sandip Kumar Garg and Anand Shekhar Singh have also stated that Putul last attended her classes in their respective institution on 3.8.1996. So as per their version, Putul also did not attend her classes on 4.8.1996, i.e., one day prior to the alleged date of her

disappearance. They have also stated that in spite of absence of Putul on 5th as also on 4th none of her family members ever approached them on or after 5th till the institution of the case to know whereabouts of Putul, her proximity, her relationship with co-students, who were also studying with her.

6. P.W. 3 Lal Jha is State Bus Conductor and on that particular date, he has come in the trial court to say that he saw Putul leaving her house for attending the class. He happens to be a neighbour of Putul residing in a tenanted premises. At best, his evidence is only to this effect that he saw Putul leaving her house on the relevant date for her tuition purpose near his residence. Lal Jha again says that on 20th August, 1996 Munna had come in the residence of informant Chiranjivi Pd. Singh at about 8-9 in the night and had demanded rupees twenty-twentyfive thousand from father of Putul so as to produce her on the assurance that he should be assured to marry Putul. At that time, wife of the informant, elder daughter of the informant Pushpa were also present. He has not stated regarding presence of Awadhesh (sala of the informant), Pradip Kumar and Shankarjit (Bhagina of the informant) and Vinay Singh, Damad of the informant. On this, the informant agreed but he did not pay any money to accused/appellant Munna.

7. P.W. 4 Ram Binay Singh is the co-villager of the informant. He only says that once he met father of Munna somewhere in the court campus after 1-1/2 - 2 months of the occurrence, i.e., institution of the case.

8. P.W. 5 is Raghavendra Kumar, who claims to be staying in Harnahiya Lodge and has stated that prior to the occurrence once accused Munna had come in his lodge and had disclosed his intention to marry Putul and has also stated that in case he would not succeed in marrying, then would kidnap Putul. This statement as per his disclosure, has been made by Munna some two months earlier from the date of occurrence. He has not assigned any reason as to why he did not reveal this fact earlier either to the informant or son-in-law of the informant or even on the date of occurrence. Son-in-law of the informant happens to be landlord of this witness but even then he did not disclose such evil design disclosed by Munna earlier. He has for the first time disclosed this fact before the informant on 12.8.1996, i.e., after seven days of occurrence; whereas disappearance of Putul

could be presumed to have been brought to his notice on 5th August, 1996. There is no explanation as to why he kept mum for seven days in bringing this fact to the notice of P.W. 9 Baidyanath Thakur. His evidence is only on the identity of person, who was arrested and handed over to the police, was Munna. He is neighbour of P.W. 11.

9. P.W. 7 is Binay Kumar Singh. He is only on the point that Munna was handed over to the police on 25.8.1996. He saw Putul coming out of her residence on 5.8.1996.

P.W. 8 Ram Kishore Chaudhary has turned hostile, who has not supported the prosecution case.

10. P.W. 9 Baidyanath Thakur happens to be guardian of Putul, who is son-in-law of the informant. He is an Advocate by profession, who has stated that he made active search of Putul on 5.8.1996 and also informed the police, on the basis of which Sanha entry has also been made in the police station but his sanha does not indicate any suspicion cast against any one. He simply says that Putul, who has left her house for coaching institution, did not come back and, as such, was missing from 5th August, 1996. He further says that after one week he could gather from P.W. 5 Raghavendra Kumar and P.W. 13 Dhirendra Tiwary that Munna had been to the lodge of the aforesaid tenants so as to disclose that he intended to marry Putul and in case of same being not materialized, he would kidnap Putul. At this stage, it would be relevant to mention that out of these two tenants, P.W. 13 Dhirendra Tiwary has turned hostile, who did not corroborate such version of P.W. 5 Raghavendra Kumar in the court. It also appears as to why these two tenants of the informant, who were residing in the same campus and in close proximity of P.W. 9 did not reveal this important fact to their landlord or son-in-law of their landlord earlier when they were in know of the fact right from the day of kidnapping or disappearance of Putul. Such attitude on the part of these two tenants in revealing and giving such clue of disappearance of Putul to their landlord does not appear to be convincing and so their evidence cannot be said to be free from suspicion. Even P.W. 9 did not cast any suspicion against any one when he informed his father-in-law (P.W. 11) on telephone.

11. P.W. 10 Pushpa Devi is the wife of P.W. 9, who is elder daughter of the informant. It has come in her evidence that marriage of Pushpa with P.W. 9 was solemnized before birth of Putul in the year 1979. In the present context of circumstance, it could be inferred that Pushpa and Putul were the only legal heirs of the informant. Pushpa has more or less stated on the line of her husband and other witnesses so far leaving of Putul for attending her coaching classes on 5.8.1996 is concerned. Besides, she has stated that once Putul had revealed that accused/appellant Munna had expressed his desire to marry Putul and on being refused and frustrated he (Munna) went to the extent of cutting his finger. This fact was well within the knowledge of Pushpa even before date of missing of Putul but this fact was not brought to the knowledge of her husband or the informant till 20.8.1996. Rather accused Munna himself is said to have approached the informant and revealed his desire to marry Putul and also demanded amount of rupees twenty-twentyfive thousand. Had this fact been brought to the notice of her husband as also her father, definitely her husband and father would have taken necessary steps for apprehending Munna and even casting suspicion against Munna earlier. Pushpa also claims to be present when Munna had approached her father and revealed his intention to produce Putul on assurance of his marriage with Putul but even at that time Pushpa kept mum and did not inform her father regarding involvement of appellant Munna when he displayed such gesture before Putul.

12. P.W. 11 is the informant, who happens to be father of Putul, who has been informed on telephone by his son-in-law Baidyanath Thakur on the date, when Putul was found missing and, accordingly, he came down to Sitamarhi from Calcutta, on the next date but he also did not lodge any information with the police. His overall conduct could be said to be that of a silent spectator. He did not react as was expected from a restless, curious, helpless father when Munna had approached him and demanded money as also assured production of Putul and proposed to marry Putul. He did not bring all these important facts to the notice of police or any agency. Of course, he along with others could apprehend Munna on 24th, i.e., after four days, accompanied him to his place so as to contact his parents and he produced Munna before the police on 25th, meaning thereby Munna was kept through out the night of 24th in the custody of informant and

others for which there was no reasonable explanation.

13. P.W. 12 is Mithilesh Devi, wife of informant, who is mother of victim Putul. She also claims her presence when Munna on 20th August, 1996, had approached her husband but revealed that Putul would be produced provided he would be given rupees twenty-twentyfive thousand and assured his marriage with Putul.

P.W. 13 Dhirendra Tiwary has, not supported the prosecution case and has turned hostile.

14. My attention has also been drawn to the evidence of P.W. 11, the informant, so far his meeting with Munna is concerned. According to P.W. 11, Munna met him near the gate of his house, not in his Baithka in presence of other persons, namely, Awadhesh, Pradip Kumar, but none of them examined. According to him, Munna met him on 20th August, 1996, who approached first of all Tarun Verma but Tarun Verma has not been examined. He also says presence of Awadhesh, his sala, Pradip Kumar and Shankarjit, his Bhagina (sister's son) and Dharmendra Kumar when Munna was apprehended but none of them had been examined on behalf of the prosecution.

15. Learned Counsel for the appellant, to sum up the entire evidence led on behalf of the prosecution, has submitted that there is not a single witness so as to say that Putul was ever seen in the company of this appellant Munna at any point of time at any place. The prosecution story is also silent so as to show the place wherefrom Putul was found missing. There is no witness to say Putul ever going with any one, what to talk of Munna, on the particular date of occurrence. Besides, it has also come in evidence that Putul had already appeared at the Intermediate Examination and no paper was brought on the record to show that on the date of occurrence she was minor. Save and except aforesaid so-called admission/disclosure of Munna, there is nothing absolutely on the record to connect him with the crime. It also appeared to be ridiculous as to why a person after committing offence of kidnapping of a minor girl would go to the extent of approaching father of the victim and demand money and assurance from father of the victim, at the risk of his life and future, for marrying the victim. Practically there is absence of any legal evidence on the record to infer participation in the crime by

this appellant.

16. In the facts and circumstances, it is manifest from the record that there is complete absence of any documentary evidence to show that the victim Putul was a minor girl. Secondly, there is no evidence on the record to show that ever kidnapping, as alleged, took place and thirdly there is no evidence on the record that appellant was ever involved in such offence of kidnapping at any point of time. There is no evidence on the record to show that the appellant ever contacted Putul at any point of time and was never seen in the company of Putul at any place at any point of time either before commission of the occurrence or after commission of the occurrence. There is complete absence of any documentary evidence to show that appellant ever made any telephonic conversation with the informant in between 20th August and 24th August, 1996. Save and except some sort of suspicion which cannot take place in legal evidence, absolutely there is no material to uphold conviction of the appellant.

17. In the facts and circumstances, the order of conviction and thereby imposition of sentence awarded to the appellant Anand Kumar alias Munna cannot be upheld. So, the same stands set aside.

In the result, the appeal is allowed. The appellant, who is in custody, is directed to be released from jail forthwith, if not otherwise required to be detained in custody in any other case.

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