

Ganesh Singh Vs. State of Jharkhand

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Court : Jharkhand

Decided On : Aug-12-2015

Appellant : Ganesh Singh

Respondent : State of Jharkhand

Judgement :

Cr. Appeal (D.B.) No. 587 of 2007 With Cr. Appeal (D.B.) No. 534 of 2007 With Cr. Appeal (D.B.) No. 619 of 2007 With Cr. Appeal (D.B.) No. 627 of 2007 Against the judgment of conviction dated 23.4.2007 and order of sentence dated 24.4.2007 passed by learned Addl. Sessions Judge, Fast Track Court, Koderma in Session Trial No.123 of 2005. In Cr. Appeal (D.B.) No. 587 of 2007 Ganesh Singh, son of Shri Chotan Singh, resident of Village Lokai, P.O., P.S. and District Koderma. Appellant Versus The State of Jharkhand Respondent In Cr. Appeal (D.B.) No. 534 of 2007 Sanjay Paswan @ Sanjay Kr. Paswan, son of Balgobind Paswan, resident of Village Jalwabad, P.O. & P.S. Koderma, District Koderma (Jharkhand) Appellant Versus The State of Jharkhand Respondent In Cr. Appeal (D.B.) No. 619 of 2007 Tulsi Yadav, son of late Mangan Yadav , resident of Village Karkhotta, P.O. & P.S. Koderma, District Koderma (Jharkhand). Appellant Versus The State of Jharkhand Respondent In Cr. Appeal (D.B.) No. 627 of 2007 Raju @ Raju Rabidas @ Rajendra Rabidas, son of Sukan Ravidas, resident of Village Dumardiha, P.S. Markacho, P.O. & District Koderma (Jharkhand). Appellant Versus The State of Jharkhand Respondent ----- For the Appellants : M/s N.K. Prasad and H.K. Shikarwar, Advocates For the State : M/s Pankaj Kumar, Mukesh Kumar,

Amaresh Kumar & Mrs.Vandana Bharti Shekhar Sinha, A.P.P. ----- PRESENT
HONBLE MR. JUSTICE R.R. PRASAD HONBLE MR. JUSTICE PRAMATH
PATNAIK By Court: All the four criminal appeals, since arising out of the same
judgment of conviction and order of sentence, were heard together and are being
disposed of by the common judgment.

2. All the four appellants were put on trial along with one Santosh Yadav, in
Sessions Trial No.123 of 2005 on the charge of kidnapping Kamal Kumar Kedia
(P.W.11) for the purpose of ransom in furtherance of their criminal conspiracy. The
court, having found all of them, except Santosh Yadav, guilty, convicted them for
the offence punishable under Sections 364A and 120B of the Indian Penal Code
vide judgment dated 23.4.2007 and sentenced each of the appellant vide its order
dated 24.04.2007 to undergo rigorous imprisonment for life and to pay fine of
Rs.20,000/- for the offence under Section 364A of the Indian Penal Code and in
default to undergo further rigorous imprisonment for one year. No separate
sentence was passed under Section 120B of the Indian Penal Code.

3. The case of the prosecution is that on 25.04.2005 at about 5-6 A.M., Umkant
Rana, the informant (P.W.1), Kamal Kumar Kedia, the victim (P.W.11),
Satyanarain Kedia, father of the victim (P.W.1) and Ashok Jain (P.W.5), left home
for morning walk and when they reached near Kedia Factory situated at Teliya
village, they saw one Commander Jeep coming from the opposite direction. At that
point of time, Kamal Kumar Kedia was walking along with Umakant Rana,
whereas Ashok Jain (P.W.5) and Satyanarain Kedia (P.W.2) had proceeded 20 to
25 yards ahead. As soon as the Commander Jeep came near Kamal Kumar Kedia
and Umakant Rana, 4 to 5 persons got down from the vehicle and made Kamal
Kumar Kedia and Umakant Rana to sit forcibly on the Commander Jeep. The
miscreants, got faces of both the persons covered. After taking them one kilometer
away, they made Umakant Rana, the informant (P.W.1) to get down from the
vehicle and proceeded ahead taking Kamal Kumar Kedia along with them. After
going to some distance, they made Kamal Kumar Kedia to get down from the
vehicle and started taking him on foot. When they reached to a hillock, they
uncovered the face of Kamal Kumar Kedia and allowed him to take some rest. In
the night, they left that place and brought him to another hillock. Thereafter, they

took him to a mine and then to thatched house where the miscreants got a letter of ransom (Ext.3) written by him. Meanwhile a telephonic call was made to the in-laws of Kamal Kumar Kedia by which they came to know that Kamal Kumar Kedia has been kidnapped for ransom. The father-in-law of Kamal Kumar Kedia informed about it to Pradeep Kumar Kedia (P.W.12), brother of Kamal Kumar Kedia and requested him to go and have negotiation with the miscreants. Pradeep Kumar Kedia (P.W.12) went to a place and had had talk with the miscreants whereby it was agreed that Rs.6,00,000/- would be paid. Thereupon, P.W.12 returned back and after manging the money, he along with P.W.10-Mahesh Periwal went to give money to the miscreants. When they reached near a place Innerva, the miscreants by riding motorcycle, came and took away the money. After receiving the money, Kamal Kumar Kedia was let off by the miscreants.

4. Meanwhile, S.I. Abhay Kumar Sinha (P.W.13), when received such information, came at Jai Durga Iron Factory where he recorded the fardbeyan (Ext.4) of Umakant Rana (P.W.1). He narrated the said fact about kidnapping of Kamal Kumar Kedia, by some miscreants, when he as well as Satyanarain Kedia and Ashok Jain had gone to take morning walk. Upon it, a formal first information report (Ext.5) was drawn against unknown.

5. After registering the case, the I.O. when did get some clue that it may be handiwork of one Tulsi Yadav and his gang, raided the house of Tulsi Yadav from where Raju Rabidas, Tulsi Yadav and Ganesh Singh, Maonj Kumar Yadav and Suresh Paswan were arrested. During raid, there was shoot out from both the side, as a result of which, one miscreant, namely, Dayanand Rana was killed. The police did recover a sum of Rs.4,20,000/-. For the the said occurrence, another case was lodged, which was registered as Koderma P.S. Case No.222 of 2005 under Sections 147, 148, 149, 353, 307 of the Indian Penal Code and also under Sections 25(1-b),a, 26, 27, 35 of the Arms Act. The police during investigation, did also find the involvement of Sanjay Yadav, who though at the relevant point of time, was in custody in connection with other case.

6. After completion of the investigation, the police submitted charge sheet against these appellants and also against Suresh Paswan, Manoj Kumar Yadav and

Sanjay Yadav. Upon which, cognizance of the offence was taken.

7. After the commitment of the case, when the appellants and also the aforesaid persons were put on trial, the accused, Suresh Paswan and Manoj Kumar Yadav escaped from the custody and thereby, these appellants named above and Sanjay Yadav faced trial.

8. During trial, the prosecution examined altogether 13 witnesses. Of them, Umakant Rana-the informant (P.W. 1), in his evidence has testified in the same manner, as he has made statement in the fardbeyan. P.W.2-Satyanarain Kedia, father of the victim, has also testified to the effect that while they had gone to take morning walk, the miscreants came on a Commander Jeep and took away his son Kamal Kumar Kedia and Umakant Rana with them, but subsequently, the miscreants had let off Umakant Rana whereas they took his son Kamal Kumar Kedia with them. The witness, in course of evidence, did identify Santosh Yadav, Tulsi Yadav, and Sudesh Paswan, as the persons, who on the point of gun, kidnapped his son Kamal Kumar Kedia. P.W.-3 Kali Yadav, P.W.6.-Sunil Agarwal and P.W.9 Chhotu Yadav were tendered for cross examination whereas P.W.7 Jagdish Singh has been declared hostile. P.W.4 Sriram Ram, a Police Inspector, has testified that when he along with other members of the police party, raided the house of Tulsi Yadav to apprehend Tulsi Yadav, the miscreants resorted to firing from the inside of the house. They also resorted to cross firing during which, one of the miscreants, namely Dayanand Rana died. They succeeded in apprehending five persons including the appellant Raju Rabidas. P.W.5- Ashok Jain who had also gone to take morning walk along with P.W.1 and P.W.11-the victim, has testified that while they had gone to take morning walk, Kamal Kumar Kedia was kidnapped by the miscreants. P.W.10 -Mahesh Periwai and Kamal Kumar Kedia (P.W.11) did testify that when Kamal Kumar Kedia was kidnapped by some miscreants, a telephonic call was received by the father-in-law of Kamal Kumar Kedia, who asked brother of Kamal Kumar Kedia, namely, Pradeep Kumar Kedia (P.W.12) to go and pay the amount of ransom. Upon which, P.W.10 and P.W.12 went there and gave Rs.6,00,000/-.

9. After the closure of the prosecution case, when the appellants were questioned under Section 313 of Cr.P.C. about the incriminating evidences/materials appearing against them, they simply denied.

10. Thereupon, the trial court, having placed its implicit reliance on the testimonies of P.W.2-Satyanarain Kedia, P.W.11- Kamal Kumar Kedia and P.W.-12 Pradeep Kumar Kedia, while acquitting Santosh Yadav, recored the judgment of conviction and sentence, as aforesaid, against all these appellants, named above, which is under challenge.

11. Mr. N.K. Prasad and also Mr. H.K. Shikarwar, learned counsel appearing for the appellants submits that though P.W.2, P.W.11 and P.W.12 have identified the appellants, but that identification made in the court was for the first time, as the appellants had never been put on TIP before the witnesses. In that event, the factum of identification remains uncorroborated. Furthermore, trustworthiness of the witnesses gets shattered when they have admitted, in their evidences, that the miscreants, at the time of kidnapping Kamal Kumar Kedia, had muffled their faces and also at the time of taking money, when P.W.12 had gone along with P.W.10 to give money to the miscreants and thereby they never claimed before the I.O. that they had identified the miscreants and thereby, it becomes quite obvious that they were not in a position to identify them and, hence their testimonies are not worth reliable, but the learned trial court did not take into account this aspect of the matter and thereby committed illegality, in recording the judgment of conviction and order of sentence against these appellants.

12. In this regard, it was further pointed out that the trial court, while recording the finding of guilt, has also taken into account of the fact that the money had been recovered from the possession of all these appellants, but the recovery of the money was not in connection with this case, rather it was in connection with other case and further what it appears from the evidence of the I.O.-P.W.13, that the money, which had been recovered from the house of the Tulsi Yadav was never the subject matter of the offence of ransom, as according to the I.O., the money, which had been recovered, never bearing the word 'PK' whereas as per the evidence of P.Ws.10 and 11, they had put the word 'PK' over almost all the

currency notes and, therefore, the money recovered from the possession of the appellants cannot be taken to be the subject matter of present case.

13. As against this, Mr. Pankaj Kumar and Mr. Mukesh Kumar, learned APP appearing for the State submits that admittedly, the witnesses P.Ws.2, 11 and 12 had identified the appellants for the first time in a court, as the appellants had never been put on TIP. But not putting the appellants on TIP will hardly make a dent in the prosecution case as it is identification in a court, which is substantive evidence and not the identification made during TIP. Under the circumstances, the court is absolutely justified in recording the judgment of conviction and order of sentence, which needs no interference.

14. We have already noticed the case of the prosecution. On the date of occurrence, Kamal Kumar Kedia (P.W.11) had gone for taking morning walk along with the informant-Umakant Rana (P.W.1), Satyanarain Kedia (P.W.2) and Ashok Jain (P.W.5). During that course, Kamal Kumar Kedia (P.W.11) was walking along with Umakant Rana whereas Satyanarain Kedia and Ashok Jain proceeded 20 to 25 yards ahead. At that point of time, all of them saw a Commander Jeep coming from the opposite direction and as soon as, they reached near Kamal Kumar Kedia and Umakant Rana, five to seven miscreants jumped down from it and made both Kamal Kumar Kedia and Umakant Rana to sit on a Commander Jeep forcibly.

15. Further case of the prosecution is that when ransom amount of Rs.6,00,000/- was paid, the miscreants let off Kamal Kumar Kedia. Subsequently, a sum of Rs.4,20,000/- was recovered when a raid was laid in the house of Tulsi Yadav. During that course, Tulsi Yadav and men of his gang resorted to firing upon the police party. In retaliation when cross firing was made by the police, one miscreant died, for which, a separate case was lodged. When the appellants were put on trial, P.W.-2- Satyanarain Kedia, father of the victim, did identify the appellants- Santosh Yadav, Tulsi Yadav and Sudesh Paswan, though Santosh Yadav, at the relevant point of time, when the offence was committed, was in custody in connection with other case.

16. Likewise, P.W.11-Kamal Kumar Kedia identified Manoj Kumar Yadav, Raju Ravidas and Santosh Yadav in course of evidence whereas P.W.2, Pradeep Kumar Kedia, who had gone to pay ransom amount, did identify all the appellants. Admittedly, the appellants, who were identified by the witnesses in course of trial, had never been put on TIP.

17. Under the circumstances, the question does arise as to whether the testimonies of the witnesses, particularly P.W.2, P.W.11 and P.W.12 are worth reliable so far as identification of the appellants are concerned? 18. In order to find answer, the main thrust would be an answer to the question as to whether evidence of a witness in court to the identity of the accused from before is trustworthy or not. In case the answer is in the affirmative, the fact that no such Parade was held would not in any manner affect the evidence in the court in relation to identity of the accused. But however, such an evidence is not free from doubt, the same may be very material while appreciating the evidence of identification in court. Evidence of identification of an accused in a court by a witness is substantive evidence whereas that of identification in TIP is though a primary evidence but not substantive one and the same can be used only to corroborate identification of the accused by a witness in a court. The identification parades are held during the course of investigation, ordinarily at the instance of the Investigating Agency for the purpose of enabling the witnesses to identify either the properties, which are the subject matter of alleged offence or the accused persons involved in the offence so as to provide it with materials to assure itself if the investigation is proceeding in the right direction and the person, whom it suspects to have committed the offence were the real culprits. Failure to hold TIP, does not make the evidence of identification in court inadmissible, rather the same is very much admissible but ordinarily identification of an accused by a witness for the first time in court should not form basis of conviction, the same being from its very nature, inherently of a weak character, unless it is corroborated by his previous identification in TIP. The previous identification in TIP is a cheque valve to the evidence of identification in a court of an accused by a witness and the same is rule of prudence and not law. In exceptional circumstance evidence of identification for the first time in court without the same being corroborated by previous identification in TIP can form the basis of conviction. The aforesaid

proposition of law has been laid by the Hon'ble Supreme Court in a case of Dana Yadav @ Dahu and Ors. vs. State of Bihar [(2007) 7 Supreme Court Cases 295] and also in a case of Mohd. Kalam @ Abdul Kalam [(2008)11 Supreme Court Cases 352} 19. Now the question does arise as to whether P.Ws, 2, 11, 12 are trustworthy on the point of identification? 20. We have already noted the fact, as has been testified by P.W.1 that in course of walk, P.W.1 was along with the victim-Kamal Kumar Kedia (P.W.11) whereas Satyanarain Kedia (P.W.2) and Ashok Jain (P.W.5) were quite ahead of about 20 to 25 yards. As per the evidence of P.W.1, the miscreants, who, got down from the vehicle and made P.W.1 and P.W.11 to sit on the vehicle forcibly, had covered their faces and in that event P.W.1, in his evidence, did testify that he was not able to identify them. If P.W.1 was not in a position to identify the miscreants, then how P.W.2, who was quite away from the miscreants, would be able to identify the miscreants, when they had covered their faces. Similarly, P.W.12-Pradeep Kumar Kedia, who have identified all the appellants, during his evidence, would not have been in a position to identify the appellants, as he, in his cross examination, has admitted that he had made statement before the police that the miscreants, who had come to take money, had covered their faces. That apart, P.W.10-Mahesh Periwal, who was along with the P.W.12, at the time of giving money, was not able to identify the appellants, as according to him, the miscreants had covered their faces. In such event, we do not find any of the witness-P.W.2, P.W.11 and P.W.12 trustworthy.

21. Further, we may record it that it is never the case of the prosecution that the ransom amount, which was paid, was seized from the possession of the appellants in connection with this case. As per the evidence of P.Ws. 10 and 12, they have put the word 'PK' over the currency notes before giving it to the miscreants, but the money, which was recovered from the house of one of the appellants, does not seems to have been bearing the said word 'PK', which would be evident from the evidence of the Investigating Officer, who did testify that the currency notes, which had recovered from the house of one of the appellants, were never bearing the word 'PK'.

22. The trial did not take into account all these aspects of the matters, in right perspective and, thereby, committed illegality in recording the judgment of

conviction and order sentence as aforesaid, which is hereby set aside.

23. In the result, all these appellants are acquitted of the charges and are discharged from the liabilities of their bail bond. So far appellant No.1- Ganesh Singh is concerned, who is in custody, is directed to be released forthwith, if not wanted in any other case 24. Accordingly, all these four appeals are allowed. (R.R. Prasad, J.) (Pramath Patnaik, J.) Jharkhand High Court, Ranchi Dated the 12 August, 2015 Ravi/N.A.F.R

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