

Jitendra Kumar Rai. Vs. State of Jharkhand.

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Court : Jharkhand Ranchi

Decided On : Feb-04-2011

Judge : Mr. Justice Sushil Harkauli;Mr. Justice R. R. Prasad, Jj.

Acts : Indian Penal Code (IPC) - Sections 120(B), 379/120(B), 364A/120 (B); Code of Criminal Procedure (CrPC) (Cr.P.C) - Sections 161, 164, 313, 313,

Appeal No. : Criminal Appeal No.868 of 2004; Criminal Appeal No.837 of 2004; Criminal Appeal No.1174 of 2004.

Appellant : Jitendra Kumar Rai.

Respondent : State of Jharkhand.

Advocate for Pet/Ap. : M/s. Mahesh Kumar Sinha; Manish Kumar; B.N.Ojha; S.N.Singh; S.K.Pandey, Advs.

Judgement :

1. All the four appellants on being found guilty were convicted under Section 364A read with Section 120(B) and also under Section 379/120(B) of the Indian Penal Code and were sentenced to undergo imprisonment for life for an offence under Section 364A/120 (B) and further to undergo R.I. for three years for an offence under Section 379/120(B) of the Indian Penal Code.

One Mica factory belonging to Alok Rajgaria situates at Tundi Road, Giridih. The proprietor Alok Rajgaria a resident of Kolkata used to visit his factory at Giridih once or two in a month.

2. It is the case of the prosecution that on 12.6.2002 Alok Rajgaria left Howrah for Dhanbad at 6.30 a.m by Satabdi Express. Before he left, he instructed his driver, Jitendra Kumar Rai (appellant) to take his car to Dhanbad on 11.6.2002 itself so that he may receive him at Dhanbad Station in the next morning to come to Giridih. Upon reaching Dhanbad Alok Rajgaria made a call to the Head office at Kolkata at 9.20 a.m. about his arrival at Dhanbad. When he did not reach Giridih till 1 p.m, a staff of the factory at Giridih informed about it to the Head office at Kolkata as generally he used to reach Giridih from Dhanbad by 11.30 a.m. When Dilip Kumar Rajgaria (P.W.4), elder brother of Alok Rajgaria, came to know that his brother has not reached Giridih, he sent one Kaushik Chatterjee, the informant (P.W.5) to Dhanbad. By the time he reached to Dhanbad, a staff from Giridih had also reached at Dhanbad. They made enquiry in this respect and came to know that the appellant Jitendra Kumar Rai, who had stayed in the house of Balram Prasad had left for station at 8 a.m. But nothing further could be known about the whereabouts of Alok Rajgaria and his driver. Therefore, on 13.6.2002, the said Kaushik Chatterjee submitted a written information suspecting therein that someone with a view to extort money has kidnapped Alok Rajgaria. Further case of the prosecution is that in the late night of 13.6.2002 a call was received by Dilip Kumar Rajgaria (P.W.4) the elder brother of the victim Alok Rajgaria whereby miscreants informed him about the kidnapping of his brother and asked for heavy ransom . Dilip Kumar Rajgaria informed about it to the Superintendent of Police, who asked him to have I.D caller on telephone. When on the next day i.e. on 14.6.2002 a call was made again, number was known and then from the office of Reliance, it could be detected that the Mobile belongs to Pappu Singh and Pinku Singh. Upon locating the place, a raid was laid at a house which belonged to Pappu Singh and Pinku Singh (both appellants) from where Alok Rajgaria and the driver were recovered and one person Sushil Kumar Roy, the appellant who was guarding them by having gun was arrested.

3. Thereafter the police took the statement of the victim under Section 161 and also got his statement recorded under Section 164 of the Code of Criminal Procedure. From his statement it transpired that while he was coming to Giridih on his car being driven by the driver Jitendra Kumar Rai (appellant), some miscreants got the car stopped on the road and then he as well as the driver were

overpowered and were brought to a place where they were confined in a room. On being asked, he made a call to his brother (P.W.4) on one day and the other call on the next day. The miscreants asked for ransom from his brother. The victim also disclosed before the police about the conduct of the driver suggesting his hand also in the alleged offence. On completion of investigation, police submitted charge sheet against these four appellants as well as Manoj Kumar Sinha and Shiv Kumar Singh. On committal of the case, all the six persons were put on trial wherein the prosecution examined altogether 8 witnesses. Of them, P.W.1 Balram Jha has simply testified that the driver Jitendra Kumar Rai had stayed in the night in his house and on 12.6.2002, he left his house at 7-8 a.m. P.W.3, the victim Alok Rajgaria who in his testimony narrated the manner in which he was kidnapped and was kept confined by the appellants Pappu Singh and Pinku Singh in their house guarded by Sushil Kumar Roy. He has also testified about the demand of ransom by the accused persons from his brother Dilip Kumar Rajgaria, who has been examined as P.W.4 and has supported the case of the demand of ransom. P.W.5, Kaushik Chatterjee is the informant whereas P.W.2, Prawin Kumar and P.W.7 Govind Prasad are the Investigating Officers, who had investigated the case in part but none of them either had recovered the victim or had arrested the appellant, Sushil Kumar Roy. The trial court on placing implicit reliance upon the testimonies of the witnesses did find that it were the appellants who in connivance with each other kidnapped the victim for ransom. Accordingly, he, while acquitting the accused Manoj Kumar Sinha and Shiv Kumar Singh, recorded the order of conviction and sentence against these four appellants.

4. Being aggrieved with the judgment of conviction and order of sentence, three appeals, as stated above, have been filed on behalf of the appellants. Mr. Mahesh Kumar Sinha, learned counsel appearing for the appellant, Jitendra Kumar Rai submits that the victim Alok Rajgaria (P.W.3) suspected the hand of this appellant in the alleged offence for the reason that the appellant on the day of occurrence had taken the car to a petrol pump for taking petrol, though, according to P.W.3, they generally do not use to take petrol in the way and that P.W.3 on being suspicious of being followed, when asked the driver (appellant) to drive the car speedily, he did not heed to his request. But this witness had never stated all these things in his statement under Section 164 of the Code of Criminal Procedure

and as such, the circumstances put forth before the court which were taken to be incriminating against the appellant is pure concoction which was never taken into consideration by the trial court and hence, the trial court committed a grave error in recording the order of conviction on those materials.

5. Learned counsel further submits that innocence of this appellant would be evident from the fact that both this appellant and the victim after being kidnapped were confined together and while they were under confinement, P.W.3 just asked from this appellant as to how this has happened. This fact as well as the fact that the appellant right from the day of his recovery was in custody of the police but was never arrested for four days clearly establish the innocence of this appellant, still the trial court recorded the order of conviction and sentence and hence, the impugned judgment is fit to be set aside.

6. Learned counsel appearing for the other appellants, Pappu Singh and Pinku Singh submits that no documentary evidence was adduced on behalf of the prosecution that a Mobile from which call was made to the brother of the victim belongs to these appellants. At the same time the prosecution has failed to establish that the house from where the victim (P.W.3) as well as the driver were recovered belongs to these appellants. Therefore, the appellants deserve to be acquitted from all the charges.

Lastly, learned counsel appearing for the appellant Sushil Kumar Roy submits that though the appellant is said to have been arrested from the house at the time of recovery of the victim and the driver, Jitendra Kumar Rai but the Police Officer who had arrested this appellant has not been examined by the prosecution. In such eventuality evidences of P.W.2 and P.W.7 the Investigating Officers regarding arrest of the appellant will hardly carry any significance.

7. It was also submitted that this appellant and other appellants have been also convicted under Section 379/120(B) of the Indian Penal Code but there has been absolutely no evidence establishing commission of the offence of theft of the car by this appellant. Moreover, no question whatsoever was put to this appellant under Section 313 of the Code of Criminal Procedure relating to theft of the car and hence, the order of conviction and sentence passed against this appellant is fit

to be set aside. Perused the records. From the evidence of P.W.3, the victim, it does appear that on 12.6.2002 when P.W.3 reached Dhanbad Station by Satabdi Express, he did not find his driver present over there. However after 10-15 minutes, he met with the driver and then left for Giridih. In the way, the appellant, Jitendra Kumar Rai asked the victim to take fuel from a petrol pump. They took petrol from a petrol pump but at earlier occasions, they had never taken petrol in the way. When they proceeded ahead, the victim noticed that they are being followed by a car and sensing some danger, he asked the driver, the appellant (Jitendra Kumar Rai) to speed up of the car but the driver did not pay any heed to it. After a while, a truck coming from the opposite direction blocked the road, as a result of which, the car got stopped. Thereupon, the miscreants came there and overpowered him as well as the driver and both were made to sit in the rear seat of the car. They were taken to a place where they were kept till 11 p.m. Thereafter they were taken to another village 3-4 km. away on foot and kept them confined in a room, where they remained confined till 10 p.m. of the next day. Thereafter the miscreants took the victim about 1 km. away, from where the miscreants asked for ransom from his elder brother, Dilip Kumar Rajgaria (P.W.4) on Mobile. At that point of time, both the appellants, Pappu Singh and Pinku Singh along with others were present there. Further it appears from the evidence of P.W.7 that as soon as P.W.4 received a call from the miscreants, he informed it to the Superintendent of Police, who advised him to have I.D. caller so that number be traced. According to the victim, the next day, i.e. 14.6.2002 again the miscreants asked for ransom. Thereupon, as per the evidence of P.W.7, number was traced and then raid was laid and the victim as well as driver were recovered from the house of Pappu Singh and Pinku Singh. At the same time, the appellant, Sushil Kumar Roy, who was guarding them, was arrested with a gun.

8. On being recovered, the statement of P.W.4 was recorded on 17.6.2002 under Section 164 of the Code of Criminal Procedure wherein he did not speak about the conduct of his driver showing his culpability in the alleged offence but subsequently, P.W.4 seems to have made statement under Section 161 of the Code of Criminal Procedure disclosing therein about the conduct showing his involvement in the alleged offence. This witness in course of evidence also stated about the conduct of the driver which unerringly points towards his guilt. Those

conducts narrated by P.W.3 is that normally the driver used to be at the platform in the station in time but on the day of occurrence, he was quite late and that they never took petrol in the way but on that day, the driver took fuel from a petrol pump and that when the victim noticed that they are being followed by someone, he asked the driver to increase the speed of the car but he did not do it. Since these statements are not there in a statement under Section 164 of the Code of Criminal Procedure, a plea was taken that these facts are concocted in order to implicate the appellant. We do not find any substance in the submission for the reason that driver working since last 10 years was quite trusted and had never given any occasion to P.W.3 for suspecting him to be unfaithful and therefore, off hard it is not expected from P.W.3 to take those action of the driver to be the part of the conspiracy. Moreover, P.W.3 who was recovered after 3 days must not have kept himself fully composed, rather must be under a trauma and thereby he would have been unable to assimilate the conduct/actions of the appellant to come to any conclusion. Probably for that reason P.W.3 at the first instance when made statement under Section 164, did not say anything with respect to conduct/action of Jitendra Kumar Rai but when the victim would have come out of the trauma, he may have assimilated the sequence of the conduct/action of the appellant which the appellant shown in course of journey from Dhanbad to Giridih and then realized said conduct to be suspicious being part of conspiracy. Therefore, whatever was stated before the police or deposed against the appellant showing his culpability cannot be taken to be an embellishment or concoction as this kind of offence is generally committed only when the criminal gets a tip-off from the close aide of the victim. We have already noticed that there was delay on the part of appellant in reaching Dhanbad Railway Station and caused further delay in consuming time in taking petrol and then driving the car slowly in spite of being asked to accelerate the speed of the car certainly go to prove the culpability of the appellant.

9. Coming to the case of other appellants, we do find from the evidence of the victim (P.W.3) itself that the house where P.W.3 was confined and from where recovery was made belongs to Pappu Singh and Pinku Singh. That apart, it has also come in the evidence of P.W.7 that the Mobile from which call was made belongs to these appellants and moreover, as per the evidence of P.W.3, these

two appellants were present at the place of confinement and also at the place where the victim was taken from where call was made and therefore, the victim being in constant touch was able to know the name of Pappu Singh and Pinku Singh. That apart, P.W.3 has identified them also at the time of his evidence. Therefore, there does not appear to be an iota of doubt in the culpability of the appellants.

10. So far the appellant, Sushil Kumar Roy is concerned, he, as per the evidence of P.W.7, was arrested at the spot while he was having a gun with him. It is true that P.W.7 had not arrested the appellant and that the person who arrested him has not been examined but this does not affect the case of the prosecution adversely in view of the evidence of P.W.3, the victim wherein he has testified that the police in course of getting them released from the custody of the miscreants, arrested Sushil Kumar Roy with firearms and that he was all along with them from the time he was kidnapped till recovery. Therefore, it was quite obvious that the victim could know the name of this appellant who was in constant touch with the victims. Therefore, we do find that the prosecution has been able to establish the involvement of all the four appellants in the offence of kidnapping for ransom and hence, they have rightly been convicted and sentenced by the trial court. Accordingly, this part of the judgment and order is affirmed.

11. So far the offence under Section 379/120(B) of the Indian Penal Code is concerned, there has been no specific evidence that the appellants committed theft of the vehicle belonging to the victim. Moreover, incriminating materials showing culpability of the appellants in the offence of theft has never been explained to the accused person under Section 313 of the Code of Criminal Procedure. Thus, the appellants seem to have wrongly been convicted under Section 379 read with Section 120(B) of the Indian Penal Code and hence, they are acquitted of the charge under section 379 read with section 120(B) of the Indian Penal Code. Accordingly, these three appeals are allowed in part.