

Sadanand Singh. Vs. State of Bihar.

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Court : Patna

Decided On : Aug-02-2010

Judge : Mridula Mishra; Dharnidhar Jha, JJ.

Acts : Indian Penal Code (IPC) - Section 364A

Appeal No. : CRIMINAL APPEAL No.655 OF 2004

Appellant : Sadanand Singh.

Respondent : State of Bihar.

Advocate for Def. : Shri Rakesh Kumar Sinha, Adv.

Advocate for Pet/Ap. : Shri Ashwini Kumar Sinha, Adv.

Judgement :

1. Ratan Singh alias Ramratan Singh (appellant in Cr. Appeal No. 655 of 2004) and Sadanand Singh (appellant in Cr. Appeal No. 756 of 2004) have been convicted by the Additional Sessions Judge-cum-Fast Track Court 5th, Nawadah, by his judgment and order dated 1.9.2004 passed in Sessions Trial No. 116 of 2004/1 of 1995 for the offence under Section 364A of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life.

2. The prosecution case, in short, is that one Pawan Kumar (P.W.4) gave a written report to the Superintendent of Police, Nawadah, on 11.6.1994 stating that his brother Arbind Kumar, who had gone to Nawadah on 28.5.1994 for purchasing

cement bags for his shop at Basodih, had not returned till 29.5.1994 and that had become an anxiety for the family members. It was also stated in the written report that on 30.5.1994 a truck loaded with cement bags came and the person accompanying the cement bags informed that Arbind Kumar had gone to Patna. On 1.6.1994 at 6 P.M. a registered letter was received by P.W.4 through which he came to know that Arbind Kumar has been kidnapped and a demand of Rs. 4,00000/- as ransom had been made. The family members started searching Arbind Kumar and collecting information in this regard. In this connection, they also came at the shop of Chandrika Prasad at Gola Road, Nawadah, who informed that Arbind Kumar had come to his shop for purchasing cement along with Sadanand Prasad singh alias Sadan Singh, who always used to accompany the brother of the informant Arbind Kumar. On 4.6.1994 a telephonic message was received at the informant's shop at Basodih, the caller enquired about the whereabouts of Arbind Kumar as also whether the registered letter had been received by the informant. When the answer was made in affirmative by the informant then the caller directed him to restrain from informing the police otherwise his brother would be killed. He was further directed to come at the specific place with the ransom money but that should not be disclosed to anyone. The informant tried to find out the name of the caller but could not identify him. On 6.6.1994 he went along with the ransom money to the specific place but no one was available to receive that money so he came back. On 6.6.1994 Sadanand Singh was noticed by the informant and when he was pressurized then Sadanand Singh asked the informant to accompany him to Nawadah. He accompanied Sadanand Singh to Nawadah and stayed with him at Mahesh Hotel. Sadanand Singh made some move here and there to show that he was making a search for Arbind Kumar and also gave assurance about the safe return of Arbind Kumar. Finally, despite the assurance of Sadanand Singh, Arbind Kumar did not come and Sadanand Singh was found traceless. Thereafter, the informant on 11.6.1994 submitted a written report to Nawadah Police Station for lodging the F.I.R.

3. On the basis of the written report, Nawadah(Town) P.S.Case No.60 of 1994 was instituted for the offences under Sections 364 and 364A of the Indian Penal Code in which Sadanand Singh was named as an accused.

4. The police investigated the case and submitted charge sheet against the accused persons. The case was committed to the court of Sessions for trial which ended in the conviction and sentence of the appellants as indicated at the very outset of the judgment.

5. The prosecution examined six witnesses to prove the charge. Out of the six witnesses P.Ws. 1 and 3 were declared hostile. P.W.2 was tendered for the purpose of cross-examination. P.W.4 is the informant whose brother Arbind Kumar was kidnapped, P.W. 5 is a local man having no connection with the family of the informant and p.W.6 is another brother of the informant and the victim.

6. The evidence led by P.Ws. 4, 5 and 6 was the only material evidence before the trial court upon which the judgment of conviction was passed.

7. The evidence of P.Ws. 4 and 6 is almost identical. Both of them have narrated the story of kidnapping of Arbind Kumar and their accompanying with Sadanand Singh for searching their kidnapped brother. Both these witnesses have stated that Sadanand Singh made some move for searching Arbind Kumar, while they have stated that they stayed in Mahesh Hotel at Nawadah. Sadanand Singh went in their company at some place and also at the residence of one Vinay Kumar. P.Ws. 4 and 6 were not allowed to enter into the house except Sadanand Singh who went inside the house. What talk he had with Vinay that had not been brought to the notice of the court. Simply it is stated that Sadanand Singh assured them about the coming back of Arbind. P.W. 4 and P.W. 6 have not stated that Sadanand Singh talked with them about ransom amount or any one's involvement in the kidnapping of their brother. Except assurance from Sadanand Singh there is no evidence on record. Evidences do not disclose that any effort was made for recovery of Arbind.

8. P.W. 6 has been examined specially for showing involvement of Ratan Kumar Singh in the alleged offence and part payment of ransom amount of Rs. 85,000/- by depositing it in the account of one Jyoti who is said to be the son of the uncle of Ratan Kumar. P.W. 6 has stated about the letter written by Arbind Kumar informing his parents about his kidnapping and also for ransom and on that very letter, it is stated, Ratan Singh had made an endorsement at the foot note. Another

letter has also been brought on record which is written by Ratan Singh asking to deposit the ransom amount in the account of Jyoti. The most surprising part of the evidence of P.W. 6 is that he has denied that he was conversant with the writing of Ratan Singh but has claimed that the letter which is marked exhibit in the case was written by Ratan Kumar Singh. P.W. 6 has produced some document such as pass book and counter-foils of pay-in-slip deposited in the account of Jyoti. Some withdrawal slips were also produced. It is most surprising as to how the holder of the account had not produced the pass book and P.W. 6 was able to produce such document in course of the trial. It was also submitted before this Court that all the documents which have been produced in court and marked exhibits they were never supplied to the Investigating Officer of the case. The documents which were produced in court did never see the light of the day. The evidence which has been brought by the prosecution on record is most unsatisfactory for the reason that the persons whose names have been mentioned in the deposition, such as, Vinay Kumar and Jyoti Kumar have not been examined as witnesses. There is no corroborative element to support the deposition of the prosecution witnesses. Under these circumstances, it can only be said that the prosecution has failed to prove the charge levelled against the accused persons.

9. Material witness like Chandrika, who is said to have disclosed before P.W. 4 and P.W. 6 that Arbind Kumar had gone in the company of Sadanand and had come to purchase cement with him, has not been examined. No reason has been shown for non-examination of this witness, for which adverse inference can be drawn against the prosecution.

10. On the basis of the evidence on record, the conviction of both the appellants cannot be sustained. Accordingly, the judgment of conviction and sentence are set aside and both the appellants are acquitted of the charge.

11. The appeals are allowed. Both the appellants are in custody. They are directed to be released forthwith, if not wanted in any other case.

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