

Mithilesh Kumar Jha Vs. the State of Bihar

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Court : Patna

Decided On : May-16-2011

Judge : Anjana Prakash, J.

Acts : Code of Criminal Procedure (CrPC) (Cr.P.C) - Section 164

Appeal No. : Criminal Appeal No.92 of 1996 (S.J.)

Appellant : Mithilesh Kumar Jha

Respondent : The State of Bihar

Judgement :

1. No.100 of 1996 has been convicted u/ss.363 and 364 I.P.C. and sentenced to R.I. for eight years and seven years respectively, whereas the appellants Kedar Jha and Gopal Jha of Criminal Appeal No.100 of 1996 have been convicted u/s.368 read with Section 365 I.P.C. and sentenced to R.I. for seven years by the Assistant Sessions Judge, Benipur in Sessions Trial No.6 of 1993/ 30 of 1994 by a judgment dated 30.3.1996.

2. The prosecution case, according to P.W.8, the Officer Incharge of Bahera P.S., is that he had received secret information that the appellant Mithilesh Kumar Jha had brought a boy to his village and was planning to sell him. On this information, he raided the house of the appellants Kedar Jha and Gopal Jha, from where the appellant Mithilesh Kumar Jha was caught with the boy, who was allegedly kidnapped. He confessed that he used to work at Kanpur and on account of

annoyance with his employer he had brought his son from the lawful custody of his parents.

3. During trial the prosecution examined eight witnesses in all. Out of whom, P.W.8 is the informant. P.W.1 is formal witness. P.W.3 and P.W.5 are tendered witnesses. P.W.2 and p.W.4 are the members of the raiding party and are on the factum of recovery of the boy from the custody of appellant Mithilesh Kumar Jha, whereas P.W.7 is the Investigating Officer.

4. Two court witnesses were also examined in the present case. Out of whom, C.W.1 is the S.D.J.M., Benipur, who had recorded the statement of the appellant Mithilesh Kumar Jha, whereas C.W.2 is a formal witness and had proved the case diary as Exhibit 3.

5. On behalf of the defence, two witnesses were examined, both of whom are formal in nature on the point of an affidavit having been filed by the father of the alleged kidnapped boy.

6. On going through the evidence of the prosecution witnesses and the court witnesses, I find that apart from oral confession and the statement recorded u/s.164 Cr.P.C, there is absolutely no material to substantiate the charge of kidnapping against the present appellants. The only fact that the victim boy was recovered from the possession of appellant Mithilesh Kumar Jha has been proved by the prosecution. Surprisingly, neither the father of the kidnapped boy nor any of his family members has been examined during trial to substantiate the fact that the boy had been removed from lawful custody against their will. Since the essential ingredient of kidnapping or abduction is that the person should have been removed from the lawful guardianship without their consent and none of the lawful guardians have deposed before this court to substantiate this allegation, it is difficult to uphold the conviction of the appellants.

7. In the result, both the appeals are allowed and the order of conviction and sentence passed against the appellants on 30.3.1996 by the Assistant Sessions Judge, Benipur in Sessions Trial No.6 of 1993/ 30 of 1994 is set aside. The appellants are discharged from the liabilities of their bail bonds.

