

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.384 of 2015

Arising Out of PS. Case No.-206 Year-2012 Thana- SULTANGANJ District- Bhagalpur

Deepak Mandal S/o Shri Birendra Mandal @ Birendra Kumar Singh, R/o
village-Puraini, Durga Asthan, PO PS- Sultanganj, District Bhagalpur.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 415 of 2015

Arising Out of PS. Case No.-206 Year-2012 Thana- SULTANGANJ District- Bhagalpur

Dablu Mandal S/o Late Nepali Mandal, resident of Mohalla- Chitra Cinema
Road, Purani Durga Asthan, Sultanganj, P.S.- Sultanganj, District- Bhagalpur.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 433 of 2015

Arising Out of PS. Case No.-206 Year-2012 Thana- SULTANGANJ District- Bhagalpur

Arbind Yadav Son of Late Adhik Prasad Yadav, resident of village Baijani
Phulwaria, P.S. Jagdishpur, District Bhagalpur.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 1178 of 2017

Arising Out of PS. Case No.-206 Year-2012 Thana- SULTANGANJ District- Bhagalpur

Bablu Mandal Son of Late Nepali Mandal Resident of Das Toli, Purani Durga
Asthan, P.S. - Sultanganj, District Bhagalpur.

... .. Appellant/s

Versus

The State Of Bihar



... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 583 of 2019

Arising Out of PS. Case No.-206 Year-2012 Thana- SULTANGANJ District- Bhagalpur

GIRIJA YADAV Son of Shyamal @ Shyamlal Yadav Resident of Village -
Masdi, P.S.- Sultanganj, District- Bhagalpur

... .. Appellant/s

Versus

THE STATE OF BIHAR Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 384 of 2015)

For the Appellant/s : Mr. Ranjan Kumar Jha, Adv.
Mr. Rana Pratap Singh, Adv.
Mr. Vikas Kumar, Adv.

For the State : Mr.D.K.Sinha, APP
For the Informant : Mr. Deewakar Upadhayay, Adv.

(In CRIMINAL APPEAL (DB) No. 415 of 2015)

For the Appellant/s : Mr.Bhaskar Shankar, Adv.

For the State : Mr.Ajay Mishra, APP

For the Informant : Mr. Deewakar Upadhayay, Adv.

(In CRIMINAL APPEAL (DB) No. 433 of 2015)

For the Appellant/s : Mr.Praveen Kumar, Adv.

For the Respondent/s : Mr.G.P.Jaiswal, APP

(In CRIMINAL APPEAL (DB) No. 1178 of 2017)

For the Appellant/s : Mr.Sanjeev Kumar, Adv

For the Respondent/s : Mr. Mayanand Jha, APP

(In CRIMINAL APPEAL (DB) No. 583 of 2019)

For the Appellant/s : Mr.Praveen Kumar, Adv.

For the Respondent/s : Mr.Manish Kumar No.2, APP

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY)

Date : 20-09-2023

All the five appeals have been taken up together and
are being disposed of by this common judgment.



2. We have heard the learned Advocates for the appellants, the learned Additional Public Prosecutors for the State and the learned counsel for the informant.

3. It may be noted that the appellants/Deepak Mandal [Cr. Appeal (DB) No. 384 of 2015], Dablu Mandal [Cr. Appeal (DB) No. 415 of 2015 and Arbind Yadav [Cr. Appeal (DB) No. 433 of 2015 were tried by learned 3rd Additional Sessions Judge, Bhagalpur in Sessions Trial Nos. 851 of 2013 / 1158 of 2013, whereas appellants/Bablu Mandal [Cr. Appeal (DB) No. 1178 of 2017] and Girija Yadav [Cr. Appeal (DB) No. 583 of 2019 were tried by learned 1st Additional Sessions Judge, Bhagalpur in Sessions Trial Nos. 644 of 2014 / 562 of 2015.

4. The appellants/Deepak Mandal, Dablu Mandal and Arbind Yadav have been convicted under Sections 364, 365 read with Section 34 of the I.P.C. vide judgment dated 26.03.2015 passed by learned 3rd Additional Sessions Judge, Bhagalpur in Sessions Trial No. 851 of 2013 / 1158 of 2013, arising out of Sultanganj P.S. Case No.206/2012, and by order dated 31.03.2015, they have been sentenced to undergo imprisonment for life, to pay a fine of Rs. 25,000/- each under Section 364/34 of the I.P.C and in default of payment of fine, to suffer further imprisonment of three years each. They have further been sentenced to undergo rigorous



imprisonment for seven years each and fine of Rs. 5,000/- each under Section 365/34 of the I.P.C. and in default of payment of fine, to suffer further imprisonment of one year each. The sentences however have been ordered to run concurrently.

5. The appellants/Bablu Mandal and Girija Yadav have been convicted under Sections 364, 365 read with Section 34 of the I.P.C. vide judgment dated 26.09.2016 passed by learned 1st Additional Sessions Judge, Bhagalpur in Sessions Trial Nos. 644 of 2014 / 562 of 2015, arising out of Sultanganj P.S. Case No. 206/12, and by order dated 30.09.2016, they have been sentenced to undergo imprisonment for life, to pay a fine of Rs. 10,000/- each under Section 364/34 of the I.P.C and in default of payment of fine, to suffer further imprisonment of two years each. They have further been sentenced to undergo rigorous imprisonment for seven years each and fine of Rs. 5,000/- each under Section 365/34 of the I.P.C. and in default of payment of fine, to suffer further imprisonment of one year each. The sentences have been ordered to run concurrently.

6. It is noted that in Sessions Trial Nos. 851 of 2013 / 1158 of 2013, with reference to Cr. Appeal (DB) Nos. 384 of 2015, 415 of 2015 and 433 of 2015, eight witnesses have been examined. In the said sessions trial, instead of Binod Kumar Jha (I.O.), one



Ram Kishore Sharma (I.O.) has been examined. It is also noted that in Sessions Trial No. 644/14, with reference to Cr. Appeal (DB) No. 1178/2017, 8 witnesses have been examined with the only difference that Vinod Kumar Jha (I.O) has been examined in place of Ram Kishore Sharma (I.O). The witnesses examined in said sessions trial are one and same but sequence in which they have been examined, is different.

7. In Sessions Trial No. 562/15, with reference to Cr. Appeal (DB) No. 583 of 2019, only six witnesses have been examined wherein two witnesses, viz. Anil Singh and Raghvendra Kumar have not been examined. For the sake of convenience, we shall be referring to the deposition of witnesses recorded in Sessions Trial Nos. 851 of 2013 / 1158 of 2013 with reference to Cr. Appeal (DB) Nos. 384 of 2015, 415 of 2015 and 433 of 2015.

8. According to the written statement (Ext.1) of informant/Jivan Rajhans (PW-5), the occurrence took place on 27.10.2012 for which written statement was given to the S.H.O., Sultanganj police station on 28.10.2012, whereafter the FIR was registered. He is the brother of the victim.

9. The prosecution case, in brief, is that on the fateful day i.e. on 27.10.2012, Chetan Shankar Rajhans did not return to his house from his medical shop. The family members started



searching for him but the victim could not be traced. During the course of search, it came to be known that the appellants/Dablu Mandal, Bablu Mandal, Deepak Mandal and Girija Yadav had forcibly taken away the victim in a vehicle towards an unknown destination. The informant(PW-5) has further claimed in his written statement that previously Chandan Mandal, Bablu Mandal, Dablu Mandal and Dipak Mandal had committed the murder of informant's cousin/Bablu Rajhans and the said accused persons were found loitering near the house of the informant for three to four days. The informant has specifically stated that during the night of 27.10.2012, at 09 to 10 PM, all the accused persons abducted Chetan Shankar Rajhans (PW-6).

10. On the basis of written report of informant, Sultanganj P.S. Case No. 206/2012 dated 28.10.2012 was registered under Sections 363/364/365/34 of the I.P.C. Routine investigation followed. The statement of the witnesses came to be recorded and on completion of the investigation, charge-sheet/ supplementary charge-sheet were submitted under Sections 364/365/34 of the I.P.C., The learned Trial Court was pleased to frame charges against the appellants under Sections 364/34 and 365/34 of the I.P.C. Charges were read over and explained to the appellants to which they pleaded not guilty and claimed to be tried.



11. After hearing the parties, the Trial court convicted the appellants and sentenced them as aforesaid. However, by the impugned judgment, co-accused Chandan Mandal has been acquitted.

12. The learned counsel for the appellants has submitted that the PWs are related to each other. There are no eye witnesses to the alleged occurrence except the abductee/Chetan Shankar Rajhans. He however was blindfolded and therefore he could not have identified the appellants. It has further been submitted that the place where kidnapping took place was a "Chowk" where there are several shops but no residents of that place have been examined. It is alleged that police had recovered the victim but it did not find any live or fired cartridge at the P.O. When the victim was released from the clutches of the appellants, there was firing and counter firing from both sides but no local person has been examined as an independent witness. There is no recovery memo on record. Merely on suspicion, the name of appellants have been taken in the present case on account of enmity. The unbroken chain of circumstantial evidence supporting the hypothesis of guilt of appellants could be proved. It has also been submitted that a motive behind the occurrence was though introduced but it has not been supported by anyone of the witnesses. On that score also, the



prosecution has miserably failed. The learned Advocate, on behalf of the appellant/Arbind Yadav has submitted that neither was he named in the FIR nor he was put on TIP nor was he named by any witness. Even the victim/ Chetan Shankar Rajhans did not name the appellant during his examination under Section 164 of the Cr.P.C. No ransom was demanded by the appellant and no injury was caused to PW-6. The allegation is that the appellant was the driver of the said vehicle but no one saw the appellant driving the vehicle. It has not been established that Bolero vehicle, which was recovered, was used in transporting the victim. No one had seen the appellant in the company of kidnappers as well as victim. In the light of aforesaid submissions, the counsel for the appellants submitted that no offence can be said to have been made out under given facts and circumstances of the case. In this way, the prosecution has failed to prove its case beyond reasonable doubt.

13. On the contrary, the learned Additional Public Prosecutors assisted by the learned counsel for the informant has submitted that informant (PW-5) has clearly stated that his brother/victim used to go to Rajhans Medical shop. PW-5/informant has reiterated what he had alleged in the FIR at the trial that the appellants/Bablu Mandal, Dablu Mandal, Deepak Mandal and Girija Yadav as well as Chandan Mandal (since



acquitted) forcibly took away the victim in a vehicle. The victim was recovered near Kamarganj river by the police after an encounter with the accused persons. The victim narrated the whole story that has happened against him. In the same breath, the informant has stated that appellants/Bablu Mandal, Dablu Mandal, Deepak Mandal and Girija Yadav as well as Chandan Mandal (since acquitted) kidnapped his brother/Chetan Shankar Rajhans. The most important witnesses such as victim, informant as well as I.O. of the case have categorically and specifically supported the story of prosecution. The victim has clearly identified the appellants/Dablu Mandal, Bablu Mandal, Deepak Mandal, Girija Yadav and Arbind Yadav and there is no reason to disbelieve the version of victim as he has already supported the case of prosecution on the core issues. PW-6/victim has stated that during the course of firing and counter firing, he could walk away from the appellants. His statement under Section 164 of the Cr.P.C is also consistent with the deposition made by him in the court and his evidence remained intact throughout during cross-examination. There is thus no reason to disbelieve the version of victim/abductee who has disclosed the story of occurrence that had taken place.



14. First and foremost, it is necessary to examine the statement of victim/abductee(PW-6) as he is sufferer of crime and his presence at the place of occurrence cannot be doubted. He has given graphic details regarding time of occurrence, manner of occurrence and place of occurrence and he has clearly explained that he was taken away forcibly on a vehicle.

15. PW-5 Jeevan Rajhans is informant of the case. He has specifically and categorically reiterated the version of written statement in his deposition. He has added that his brother/victim was recovered near Kamarganj river with the help of police. His statement during cross-examination is quite consistent with the story of prosecution. He has also supported and corroborated the statement of victim/PW-6.

16. PW-7 Raghvendra Kumar, who is one of the member of raiding party, has stated that he got information that the miscreants forcibly took away the victim in a vehicle. There was firing and counter firing from both sides and three accused persons started running away and the abductee/Chetan was released from the clutches of the appellants and was brought to the police station where he disclosed the name of appellants/Bablu Mandal, Dablu Mandal, Girija Yadav and the driver/Arbind Yadav.



17. PW-8 Ram Kishore Sharma is I.O. of the case. He has stated that a written application was given by the informant and on the basis of said written application, formal FIR was recorded by him which has been marked as Ext.-4. He had recorded the re-statement of the informant, had inspected the place of occurrence and had identified the P.O. He had made efforts to get the mobile number of abductee as well as call details and tower location of accused Dablu Mandal and Bablu Mandal. A vehicle bearing registration no. BR-10P 7385 which was used in commission of the said crime was recovered from the house of appellant/Arbind Yadav. During the course of investigation, 164 statement of abductee/victim was recorded. The statement of this witness (I.O.) is also quite consistent with the prosecution story.

18. The question arises whether conviction of the appellants under Section 364, 365 read with Section 34 of the I.P.C. is justified or not?

19. It is necessary to spell out the provision of Sections 364 and 365 of the I.P.C.

364. Kidnapping or abducting in order to murder- Whoever kidnaps or abducts any person in order that such person may be murdered or may be so disposed of as to be put in danger of being murdered, shall be punished with [imprisonment for life] or rigorous imprisonment



for a term which may extend to ten years, and shall also be liable to fine.

The section mandates the intention of murdering the victim or putting him in danger of being murdered. In the light of said proposition intention is the real ingredient to constitute a crime under Section 364 of the I.P.C.

20. In order to constitute an offence under Section 365 of the IPC, the essential ingredients are as follows:-

(i) Kidnapping by accused or abduction by him.

(ii) Intention of the accused is to keep that person kidnapped or abducted in wrongful confinement.

21. If the evidence of PW-6(victim) is analyzed, it would appear that in the course of cross firing, he got an opportunity to save himself from the appellants. Had he not got the opportunity, he might have been killed by the appellants. PW-7 is also quite consistent and PW-5 (informant), who unfolded the story of the prosecution by giving written statement, has also suspected that appellants/Dablu Mandal, Bablu Mandal, Deepak Mandal and Girija Yadav as well as Chandan Mandal (since acquitted) had kidnapped the abductee/victim. Though the informant is not an eye witness to the occurrence but his statement is quite consistent with the version of PW-6 (victim). The PWs 1,



2, 3 and 4, even though they are not eye witness of the occurrence but they have supported the story of prosecution in the same way.

22. The contention of the learned APP is quite tenable in the light of the fact that the statement of victim remained intact, throughout the trial. On the other hand, the contention of the appellants on the point of motive and the lapses on the part of the I.O. are not tenable in the light of the eye witness account. The investigation appears to have been conducted in faulty manner. But only due to the unprofessionalism of the I.O., the case of prosecution cannot be thrown out.

23. Taking the totality of the materials available on record and circumstance of the said case, we find that these lapses do not make the prosecution case doubtful for it to be rejected outrightly. We do reckon that motive is no factor in deciding a criminal case, especially when eye witness account is available on record.

24. We have gone through the evidence of all the prosecution witnesses. We find that the statement of victim is quite convincing and reliable and his version has remained intact during the cross examination which has been corroborated by the I.O. Thus there is no reason to disbelieve the version of the victim. Nothing could be collected during the cross examination to



discredit the testimony of the victim as he has identified all the appellants.

25. So far as the applicability of Sections 364 and 365 of the I.P.C. are concerned, the appellants have committed the offence with the intention to take away the abductee. The prosecution has proved its case beyond reasonable doubt and there is no reason to differ with the findings of the Trial court under Sections 364 and 365 of the I.P.C.

26. However, the victim has stated that no demand of ransom was made by the appellants during the period of his confinement. He was though kept blindfolded but was never ill-treated. For this reason, we deem it appropriate to reduce the sentence of the appellants to the period already undergone by them, which would meet the ends of justice.

27. Hence, the conviction of the appellants/Deepak Mandal [Cr. Appeal (DB) No. 384/2015] and Dablu Mandal [Cr. Appeal (DB) No. 415/2015] under Sections 364 and 365 with aid of 34 of the IPC is upheld. However, the sentence imposed against them vide order dated 31.03.2015 is reduced to period of custody which they have already undergone.

28. Similarly, the conviction of appellants/Bablu Mandal [Cr. Appeal (DB) No. 1178/2017 and Girija Yadav [Cr.



Appeal (DB) No. 583/2019] under Sections 364 and 365 with aid of 34 of the IPC vide judgment dated 26.09.2016 is also upheld. The sentence imposed against them vide order dated 30.09.2016 is also reduced to period of custody which they have already undergone.

29. So far as appellant/Arbind Yadav [Cr. Appeal (DB) No. 433/2015] is concerned, according to the deposition of the victim, appellant/Arbind Yadav was not present on the vehicle where victim was firstly confined at the initial part of the occurrence. However, the vehicle was recovered from his house and he was identified by the victim in the police station when appellant/Arbind Yadav was brought there. Hence, his conviction under Section 364 of the IPC is set aside but his conviction under Section 365/34 is upheld. The sentence imposed against him is also reduced to period of custody which he has already undergone.

30. Since the appellant/Deepak Mandal in Cr. Appeal (DB) No. 384/2015, appellant/ Dablu Mandal in Cr. Appeal (DB) No. 415/2015, appellant/ Bablu Mandal in Cr. Appeal (DB) No. 1178/2017 and appellant/Girija Yadav in Cr. Appeal (DB) No. 583/2019 are in jail, they are directed to be released forthwith, if not required in any other case, subject to the payment and realization of fine imposed upon them.



31. As the appellant/Arbind Yadav in Cr. Appeal (DB) No. 433 of 2015 is on bail, his liabilities under the bail bonds is cancelled.

32. In the aforesaid manner, all the appeals are partly allowed.

33. Let a copy of this judgment be dispatched to the Superintendent of the concerned Jail forthwith for compliance and record.

34. The records of these appeals be returned to the Trial Court forthwith.

35. Interlocutory application/s, if any, in all the appeals, also stand disposed off accordingly.

(Alok Kumar Pandey, J)

(Ashutosh Kumar, J)

amitkumar/
shahzad

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