

State Of U.P. vs Tribhuwan Singh And Others on 31 January, 2018

Author: Amar Singh Chauhan

Bench: Amar Singh Chauhan

HIGH COURT OF JUDICATURE AT ALLAHABAD

RESERVED/AFR

Court No. - 20

1. Case :- GOVERNMENT APPEAL No. - 67 of 1988

Appellant :- State Of U.P.

Respondent :- Tribhuwan Singh And Others

Counsel for Appellant :- A.G.A.

Counsel for Respondent :- D.S.M. Tripathi, Mrs Kamla Singh, R.D. Singh

2. Case :- GOVERNMENT APPEAL No. - 68 of 1988

Appellant :- State Of U.P.

Respondent :- Smt. Sheela Singh

Counsel for Appellant :- A.G.A.

Counsel for Respondent :- D.S.M. Tripathi, D K Singh

Hon'ble Amar Singh Chauhan, J.

These are two connected government appeals aforementioned have been filed before this court challenging the common judgment and order dated 20.10.1987 passed in Session Trial No. 55 of 1986 by 7th Additional Sessions Judge, Varanasi, under Sections 363, 364, 365, 368 and 342 I.P.C. (State Versus Tribhuwan Singh and others) and under Section 363 I.P.C. (State Versus Sheela Singh), P.S. Chetganj, District Varanasi, whereby the accused Smt. Sheela Singh has been convicted

and sentenced to undergo 1 year simple imprisonment with a fine of Rs. 500/- under Section 363 I.P.C. with default stipulation and she was acquitted of the charges under Sections 364, 365, 368 and 342 I.P.C. and the co-accused Tribhuwan Singh was acquitted of the charges of Sections 363, 364, 365, 368 and 342 I.P.C., P.S. Chetganj, District Varanasi.

Since the controversy and facts involved in these appeals are the same, therefore, they are being heard and disposed of together by a common judgment with the consent of the parties.

In a short compass, the facts which give rise to the present appeals are that the first information report was lodged on 28.3.1983 at P.S. Chetganj, District Varanasi with regard to missing of Master Saurabh (infant) with the allegation that the accused Smt. Sheela Singh has no issue and she was on visiting terms with the family of Mahavir Prasad Chaudhary, whose house is situated at Chup Chandi, Nari Imali, District Varanasi. In March, 1983, Usha Agrawal, daughter of Mahavir Prasad Chaudhary and wife of Suresh Chandra Agrawal had come to her parental house at Nari Imali. Smt. Usha Agrawal was begotten a son after consecutive birth of four daughters, who was about 3 months old at the time of occurrence. The infant Saurabh, son of the victim, along with his mother Smt. Usha Agrawal, brother Krishna Kumar were sitting in the outer room of Mahavir Prasad Chaudhary on 28.3.1983 at 9:00 A.M. At this moment, accused Smt. Sheela Singh went to the house of the Mahavir Prasad Chaudhary and about 10:00 A.M., Krishna Kumar Chaudhary left for his shop but Smt. Sheela Singh remained there in the room with Smt. Usha Agrawal. At about 4:00 P.M., when Smt. Usha Agrawal left the room for helping her brother's wife in the kitchen, Smt. Sheela Singh and newly born Saurabh were left alone in the room. After five minutes, when Smt. Usha Agrawal came back to the room, she found that her son Saurabh was missing and Smt. Sheela Singh was also not found there. Despite abundant search, they could not be found. During investigation, Investigating Officer recorded the evidence with the effect that the accused Smt. Sheela Singh along with Tribhuwan Singh and Master Saurabh had gone to the house of Indra Pal, who refused to give shelter as they have stolen the child and on this information, raid was made near Devgaon and both the accused were eloped after leaving the Master Saurabh in plastic dolchi. Later on, accused were arrested and their confessional statement was recorded. The Investigating Officer after concluding the investigation, submitted the charge-sheet under Sections 363, 364, 365, 368 and 342 I.P.C. The trial court framed the charges in the aforesaid sections to which accused appellants denied and claimed to be tried.

To bring home the guilt of the accused, the prosecution has examined as many as 16 witnesses. P.W. 1 is the Suresh Chandra Agrawal and he has stated that after finishing his journey to a sacred place of Baba Shyam Khatuji, Rajasthan, when he arrived at home, his wife started lamenting and on being made enquiry, he found that his infant son Master Saurabh, aged about 3 and a half months, was being kidnapped by the accused. He tried to trace out and also got published the price in the newspaper for recovery of his son. Indra Pal told him that he has not given shelter to accused accompanied by Master Saurabh and on this information, raid was being made near Devgaon and his child was recovered from plastic dolchi but accused fled away leaving the kidnapped child.

P.W. 2 is the Seeta Ram Ghamoria who is the Tehrir lekhak. He has stated that he is the relative of Suresh Chandra Agrawal and on being informed by telephone regarding kidnapping of the child on

28.3.1983, he prepared the tehrir on the instruction of child's parent which is Exhibit Ka-3 and on the basis of the tehrir, first information report was registered.

P.W. 3 is the Krishna Kumar Chaudhary and stated that Suresh Chandra Agrawal is his brother-in-law. He recognized the accused Smt. Sheela Singh by saying that she used to come at the house of the informant.

P.W. 4 is Dr. R.K. Mishra and stated that he is M.B.B.S. and pathologist. He is running pathology clinic. On 19.1.1983, accused Smt. Sheela Singh came to the pathology which was referred by Dr. Kusum Chandra and got pregnancy test by urine sample. The result of pregnancy test was found negative.

P.W. 5 is the Radhey Shyam Chaurasia and he is the stamp vendor.

P.W. 6 is the Dr. Vibha Mishra and stated that she is gynaecologist and also given treatment to accused Smt. Sheela Singh.

P.W. 7 is the Jamuna Prasad Pandey, S.I., Kotwali Dehat, Gonda and stated that he was posted as S.I., Hariganj, Varanasi in 1983 and he was asked by the S.S.P., Varanasi to recover the child. On the basis of information given by the mukhbir, he enquired Indra Pal Singh and thereafter on receiving the clue, child was recovered.

P.W. 8 is the Chedi Lal is the pan shopkeeper and stated that accused present in the court room came to his shop at 12:30 p.m. They possessed the orange colour dolchi in which one towel, nipple, bottle of milk were also kept in it. After chewing pan and waiting for someone, accused went away.

P.W. 9 is the Dr. Kusum Chandra and stated that she is running a Chandra Nursing Home. As she is gynaecologist, accused Smt. Sheela Singh came to the Nursing Home for getting treatment of being conceived.

P.W. 10 is the Hari Narayan Singh, Constable, Mahoba stated that he was posted in the Magistrate court, Varanasi at the time of occurrence. He prepared the warrant on being surrendered by the accused.

P.W. 11 is the Dr. B.M.D. Gupta and stated that he is the pathologist and took sample for blood test from the accused Smt. Sheela Singh which was being referred by Dr. Kusum Chandra.

P.W. 12 is the Shri S.B. Singh who is retired City Magistrate and stated that he was appointed as Special Magistrate at Varanasi on 7.6.1983. He had accomplished the identification parade and the accused Tribhuwan Singh was rightly got identified by the witness Chedi Lal and Jamuna Prasad Pandey.

P.W. 13 is the Smt. Usha Agrawal who is the mother of the infant child Master Saurabh and stated that she is the wife of Suresh Chandra Agrawal and on the date of occurrence, she was in her maika

and her child Master Saurabh was kidnapped by accused Smt. Sheela Singh.

P.W. 14 is the Yogendra Kumar Rai is the S.O., Padri, Mirzapur and stated that he is the Investigating Officer and at the time of occurrence he was posted at Chowki Nari Imali, Varanasi. On the basis of the first information report, the case was registered. He copied the chik FIR, entered in the G.D. and also prepared the site plan.

P.W. 15 is the Constable Ram Dev and stated that on 28.3.1983, he was posted at Police Station Chetganj, Varanasi and on the basis of the tehrir report of informant Seeta Ram Ghamoria, first information report was lodged and also entered in the G.D. which is Exhibit Ka-23 and 24 at Case Crime No. 93 of 1983, under Sections 363, 364, 365, 368 and 342 I.P.C., Police Station Chetganj, District Varanasi. He also stated that the aforesaid facts were mentioned in the report no. 43 of G.D. dated 28.3.1983.

P.W. 16 is the Raj Bali Singh who is S.O., Dudhi, Mirzapur and stated that at the time of occurrence, he was posted as S.S.I., P.S. Chetganj, District Varanasi. The investigation was proceeded by the Investigating Officer Yogendra Kumar Rai, S.I., and submitted the charge-sheet against the accused Tribhuwan Singh and continued the investigation against the accused Smt. Sheela Singh. The investigation was handed over to him on the application of the informant by S.P. On his report, identification parade got done of the accused Smt. Sheela Singh and she was rightly got identified. After concluding the investigation, charge-sheet was submitted. In link evidence, affidavit of Ramker Ram, Shiv Ji, Kamleshwar Singh, Ram Lal Yadav, Krishna Yadav, Ram Ujagir Shukla and Kedar Nath indicating that the accused remained bapardah till the identification.

After concluding the prosecution evidence, statements of the accused were recorded under Section 313 Cr.P.C., in which they denied the involvement in the occurrence. The accused Smt. Sheela Singh has stated that she has not kidnapped the child. The father of the child namely Suresh Chandra Agrawal kept evil eye on her and also took her on scooter for amusement and ultimately she refused to accompany him, on account of which she has been falsely implicated in this case. The accused Tribhuwan Singh has stated that Suresh Chandra Agrawal build pressure on him to give evidence against accused Smt. Sheela Singh and when he refused to do so, he has been falsely implicated in this case.

Learned Additional Sessions Judge-VII, Varanasi, after perusing the record and hearing the counsel for the parties came to the conclusion that the prosecution has established the charge of kidnapping against the accused Smt. Sheela Singh who has been convicted and sentenced to undergo one year simple imprisonment with a fine of Rs. 500/- under Section 363 I.P.C. with default stipulation and acquitted of the charges for the offence under Sections 364, 365, 368 and 342 I.P.C. but failed to establish the charges against the accused Tribhuwan Singh for the offence under Sections 363, 364, 365, 368 and 342 I.P.C., and therefore acquitted of the charges.

Feeling aggrieved, the State of U.P. came up in these appeals.

I have heard learned A.G.A. for the State, Mrs. Kamla Singh as counsel for the respondents and perused the record of the case.

It is submitted by learned A.G.A. for the State that the accused Smt. Sheela Singh has been convicted and sentenced to undergo one year simple imprisonment with a fine of Rs. 500/- under Section 363 I.P.C. with default stipulation. She was acquitted of the charges under Sections 364, 365, 368 and 342 I.P.C. The accused Tribhuwan Singh was not found guilty and he was acquitted of all the charges under Sections 363, 364, 365, 368 and 342 I.P.C. Learned A.G.A. for the State assailed the impugned judgement on two points. Firstly, the presence of accused Tribhuwan Singh on the spot was established by eye-witness account and also he was got identified rightly by the witness. Secondly, Master Saurabh has been recovered from the custody of the accused Smt. Sheela Singh and Tribhuwan Singh both. Even then trial court perversely recorded the finding of acquittal.

Per contra, learned counsel for the respondents contends that the kidnappee child Master Saurabh was not recovered from the actual possession of the respondents-accused as he was found on the roadside near Devgaon in the dolchi and accused Smt. Sheela Singh and Tribhuwan Singh were not arrested from that place. They were implicated only on the basis of the suspicion. It is a case of circumstantial evidence and the chain which constitute the offence, is not complete.

In the case in hand, neither any eye-witness account of kidnapping nor of kidnappee child was got recovered in real possession of the accused respondents was given. The prosecution case rests on sole identification evidence.

Hon'ble Supreme Court in the case of Budhsen and another vs. State of U.P., AIR 1970 SCC 1321 observed that:-

"The evidence of mere identification of the accused person at the trial for the first time is from its very nature inherently of a weak character. The evidence in order to carry conviction should ordinarily clarify as to how and under what circumstances he came to pick out the particular accused person and the details of the part which the accused played in the crime in question with reasonable particularity. The purpose of a prior test identification, therefore, seems to be to test and strengthen the trustworthiness of that evidence. It is accordingly. considered a safe rule of prudence to generally look for corroboration of the sworn testimony of witnesses in court as to the identity of the accused who are strangers to them, in the form of earlier identification proceeding. There may, however, be exceptions to this general rule, when, for example, the court is impressed by a particular witness, on whose testimony it can safely rely, without such or other corroboration."

In the instant case, there is solitary identification report prepared in jail to connect the respondent with the crime which could not itself form basis of conviction.

In view of what have been indicated above, the impugned judgment and order dated 20.10.1987 by which the accused Smt. Sheela Singh has been convicted and sentenced to undergo 1 year simple

imprisonment with a fine of Rs. 500/- under Section 363 I.P.C. with default stipulation and got acquitted of the charges for the offence under Sections 364, 365, 368 and 342 I.P.C. and accused Tribhuwan Singh was acquitted of all the charges under Sections 363, 364, 365, 368 and 342 I.P.C does not suffer from perversity and infirmity.

Accordingly, both of the connected government appeals are hereby dismissed.

Office is directed to communicate the order to the court concerned for compliance.

Order dated: 31.1.2018 Prakhar