

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Criminal Appeal (DB) No. 1044 of 2003

[Against the judgment of conviction and order of sentence dated 05.07.2003 passed by learned Addl. Sessions Judge, FTC-III, Hazaribagh in Sessions Trial No. 86 of 2001].

Md.Gufran, son of Md. Ashique, resident of village- Bhalua, P.S. Bela, District-Gaya (Bihar).APPELLANT

The State of JharkhandRESPONDENT

Versus

For the Appellant: Mr. A.K. Sahani, Advocate.

For the State : Mr. Abhay Kr. Tiwari, A.P.P

P R E S E N T
SRI ANANDA SEN, J.
SRI SANJAY KUMAR DWIVEDI, J.

J U D G M E N T

Dated: 18.12.2024

By Court:

This criminal appeal is directed against the judgment of conviction and order of sentence dated 05.07.2003 passed by learned Addl. Sessions Judge, FTC-III, Hazaribagh in Sessions Trial No. 86 of 2001, whereby the appellant having been found guilty of charges under Section(s) 364A/120-B of Indian Penal Code and has been convicted and sentenced to undergo imprisonment of life.

2. Learned counsel for the appellant submits that the First Information Report was registered against unknown persons without disclosing any fact showing the involvement of this appellant in this case. He further submits that there is no cogent and reasonable legal evidence in this case, which substantiates the involvement of this appellant in this crime. He also submits that other accused persons have been acquitted but the appellant has wrongly been convicted in this case. He argues that none of the witnesses have disclosed any fact showing the involvement of this appellant. He also argues that non examination of the Investigating Officer has caused serious prejudice to the case of the appellant. He further adds that the prosecution has not been able to prove its case beyond the shadow of reasonable doubt. On these grounds, he prays for acquittal of the appellant .

3. Learned counsel appearing on behalf of the State opposing the prayer of the appellant, submits that the prosecution has been able to prove its case beyond shadow of reasonable doubt against the appellant. He further submits that non-examination of the Investigating Officer as a witness, has not prejudiced the appellant, as there is sufficient evidence otherwise against him. He also submits that there is nothing to disbelieve the evidence of P.W.-3, who is the victim. On the aforesaid grounds, he submits that the impugned judgment of conviction and order of sentence passed by the learned court is justified and should not be interfered with.

4. The FIR is at the instance of informant- Hari Lal (P.W.2), who is the father of the victim in which, it has been stated that on 16.7.2000 at about 4:30 p.m. his second son, namely Mahesh Kumar proceeded from Itkhori to Hazaribagh on a commander Jeep. On the way, he was kidnapped and the kidnappers demanded Rs.2 lakh for releasing him under the threat of killing him. The victim raised hue and cry and on such hue and cry the kidnappers shifted themselves into a truck, which was followed by a motorcycle by the Munshi of the informant, but ultimately the accused persons succeeded in fleeing away.

On the basis of aforesaid report, Barhi (Padma) P.S. Case No. 143 of 2000 was registered for the offence under Sections 364A/120B of the Indian Penal Code. After investigation, the police submitted charge-sheet against the appellant and other persons. Thereafter the cognizance of the offence was taken against the appellant and the case was committed to the Court of Sessions. Since the appellant pleaded not guilty, charge was framed under Sections 364A/120B of the Indian Penal Code and he was put on trial.

5. The prosecution in order to prove its case has examined three witnesses, who are as follows:-

P.W.1- Anand Pandey
P.W.2- Hari Lal (the informant),
P.W.3- Mahesh Kumar.

6. Only one document i.e. written report of the informant has been exhibited as Ext.1.

7. After closure of prosecution evidence, the statement of the appellant was recorded under Section 313 Cr.P.C.

8. The Trial Court, after hearing both the parties and considering the oral and documentary evidence, convicted the appellant for committing the offence under Sections 364A/120B of the Indian Penal Code and sentenced as aforesaid.

9. From the evidence, led by the prosecution, we find that the present case was instituted against unknown and after investigation, the police submitted charge sheet against four accused persons. Except this appellant, three accused persons namely, Arvind Kr. Bhattacharjee, Prabhat Kumar Sinha and Md. Jakir have been acquitted for the charges under Sections 364A/120B IPC as they were not found guilty. From the evidence of P.W.1, we find that he has also been taken away with the victim by the kidnappers. He supports the circumstance but he could not say about the number of the truck and nothing was looted from him. He could not identify any of the kidnappers though he was left in the way. The informant (P.W.2) in para 7 of his evidence has also stated that he cannot identify any of the kidnappers. He also stated that the kidnappers have demanded Rs.2,00,000/- as ransom, which was told to him by Munsi- Harishchand Prasad, who has not been examined as witness nor he has been named as witness in the chargesheet, therefore the demand of ransom also remains unsubstantiated. The informant was also not examined.

10. The most important witness is P.W.3, who was kidnapped by the offenders. He supports the fact of the kidnapping. In para 3 of evidence, he has stated that the kidnappers took him to Gaya and they put down Anand Pandey (P.W.1) on the way. In paragraph 4, he further stated that he was kept in a house near railway crossing at Gaya and from there he was taken to village Bhaluwabad by maruti van and the criminals kept him the house of Md. Gufran i.e. the house of this appellant. He further stated that the driver of the truck and maruti van, which were used in kidnapping, have not faced the trial in this case. He stated that 23.7.2000 the accused took him out and made him to sit in a L.P. Truck by tying his hands and legs and laid him on the rear seat and gagged his mouth by tape. This witness also stated that he inferred from the conversation between the criminals that somebody is following them, thereafter the truck stopped suddenly and they started fleeing, then the victim saws that the police boarded the truck and opened his hands and legs and then he returned home. In paragraph 10, he stated

that since this appellant and his brother in-law always used to remain present in the house, he presumed that the house belonged to this appellant.

11. From the evidence of the witnesses, specially from the evidence of P.W.3 i.e. the victim, we find that there is no corroborative evidence to connect this appellant with the alleged occurrence. In the instant case there is no evidence that Md. Gufran was an associate of the kidnappers but he was convicted only on the basis of the evidence of the victim that the victim was kept in the house of Md. Gufran for six to seven days. It is also not proved that the house where the victim was kept for sometime belonged to the appellant. Further there is no evidence to suggest that this appellant had taken part in abducting the victim. The demand of ransom was also not substantiated by the prosecution.

12. Thus, there is doubt about the involvement of this appellant in this crime. The prosecution has also failed to prove that the appellant is an associate of the kidnappers. When a genuine doubt has been created by the defence in the mind of this Court about the involvement of the appellant in the kidnapping, it is not proper for us to convict this appellant under Sections 364A/120B IPC. Thus, we set aside the judgment of conviction and order of sentence dated 05.07.2003 passed by learned Addl. Sessions Judge, FTC-III, Hazaribagh in Sessions Trial No. 86 of 2001 by giving the appellant benefit of doubt.

13. Accordingly, this appeal is **allowed**. Let the Trial Court Records be sent back to the Court concerned forthwith, along with a copy of this judgment. Since the appellant is already on bail, he is discharged from the liability of bail bonds, so are the bailors.

14. Pending interlocutory application, if any, also stands disposed of.

(ANANDA SEN, J.)

(SANJAY KUMAR DWIVEDI, J.)

Jharkhand High Court, Ranchi.
Dated: the 18th December, 2024.
NAFR/Anu/Cp.-3.