

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1435 of 2017

Arising Out of PS. Case No.-23 Year-1997 Thana- SHIVSAGAR District- Rohtas

Lalan Paswan S/o Late Ram Charitar Paswan, R/o Village- Turki, P.S. Chenari, District- Rohtas. Appellant

Versus

The State of Bihar Respondent

with

CRIMINAL APPEAL (DB) No. 1292 of 2017

Arising Out of PS. Case No.-23 Year-1997 Thana- SHIVSAGAR District- Rohtas

Lalan Paswan S/o Late Bali Ram Paswan R/o Village Belaspur, P.S. Chenari, District Rohtas. Appellant

Versus

The State of Bihar Respondent

with

CRIMINAL APPEAL (DB) No. 1293 of 2017

Arising Out of PS. Case No.-23 Year-1997 Thana- SHIVSAGAR District- Rohtas

Lok Nath Paswan S/o Late Tulsi Paswan R/o Village - Belaspur, P.S. Chenari, District Rohtas. Appellant

Versus

The State of Bihar Respondent

with

CRIMINAL APPEAL (DB) No. 1323 of 2017

Arising Out of PS. Case No.-23 Year-1997 Thana- SHIVSAGAR District- Rohtas

Ramakant Paswan S/o Shivbilas Paswan Resident of Village- Harnagora, P.S. Chenari, District Rohtas. Appellant

Versus

The State of Bihar Respondent

with

CRIMINAL APPEAL (DB) No. 1379 of 2017

Arising Out of PS. Case No.-23 Year-1997 Thana- SHIVSAGAR District- Rohtas

Ravindra Chaubey Son of Late Manmohan Chaubey, Resident of Village- Belaspur, P.S.- Chenari, District- Rohtas. Appellant

Versus

The State of Bihar Respondent

with

CRIMINAL APPEAL (DB) No. 1419 of 2017

Arising Out of PS. Case No.-23 Year-1997 Thana- SHIVSAGAR District- Rohtas

Suresh Ram Son of Late Chirai Ram, Resident of Village-Belaspur, P.S.- Chenari, District-Rohtas. Appellant



Versus

The State of Bihar Respondent

with
CRIMINAL APPEAL (DB) No. 1452 of 2017

Arising Out of PS. Case No.-23 Year-1997 Thana- SHIVSAGAR District- Rohtas

Arjun Ram Son of Late Sita Ram Ram, Resident of Village- Belaspur, P.S.-
Chenari, District- Rohtas.

... .. Appellant

Versus

The State of Bihar Respondent

with
CRIMINAL APPEAL (DB) No. 59 of 2018

Arising Out of PS. Case No.-23 Year-1997 Thana- SHIVSAGAR District- Rohtas

Shiva Nand Bind S/o Baban Bind, R/o Village- Bilaspur, P.S.- Chenari,
District- Rohtas.

... .. Appellant

Versus

The State of Bihar Respondent

Appearance :

(In CRIMINAL APPEAL (DB) No. 1435 of 2017)

For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate
Mr. Manish Chandra Gandhi, Advocate
Mr. Samrjeet Singh, Advocate
Mr. Ritwaj Raman, Advocate
Ms. Vaishnavi Singh, Advocate
Mr. Ritwik Thakur, Advocate
Mr. Akash Ranjan, Advocate

For the Respondent/s : Mr. Abhimanyu Sharma, Addl PP
(In CRIMINAL APPEAL (DB) No. 1292 of 2017)

For the Appellant/s : Mr. Rakesh Narayan Singh, Advocate
For the Respondent/s : Ms. Shashi Bala Verma, Addl PP
(In CRIMINAL APPEAL (DB) No. 1293 of 2017)

For the Appellant/s : Mr. Rakesh Narayan Singh, Advocate
For the Respondent/s : Mr. Satya Narayan Prasad, Addl PP
(In CRIMINAL APPEAL (DB) No. 1323 of 2017)

For the Appellant/s : Mr. Binod Murari Mishra, Advocate
For the Respondent/s : Mr. Abhimanyu Sharma, Addl PP
(In CRIMINAL APPEAL (DB) No. 1379 of 2017)

For the Appellant/s : Mr. Kamlakant Pandey, Advocate
Ms. Deepti Pandey, Advocate

For the Respondent/s : Mr. Abhimanyu Sharma, Addl PP
(In CRIMINAL APPEAL (DB) No. 1419 of 2017)

For the Appellant/s : Mr. Baban Kumar, Advocate
Mr. Sanjay Kumar, Advocate

For the Respondent/s : Mr. Dilip Kumar Sinha, Addl PP
(In CRIMINAL APPEAL (DB) No. 1452 of 2017)



For the Appellant/s : Mr. Baban Kumar, Advocate
Mr. Sanjay Kumar, Advocate
For the Respondent/s : Mr. Abhimanyu Sharma, Addl PP
(In CRIMINAL APPEAL (DB) No. 59 of 2018)
For the Appellant/s : Ms. Soni Shrivastava, Advocate
Ms. Aditi Sharma, Advocate
Ms. Deepti Pandey, Advocate
For the Respondent/s : Mr. Dilip Kumar Sinha, Addl PP

**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE SHAILENDRA SINGH
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)**

Date : 19-04-2024

All these appeals have been preferred for setting aside the judgment of conviction dated 20.09.2017 and order of sentence dated 22.09.2017 passed by the learned Fast Track Court-I, Rohtas at Sasaram in Sessions Trial No. 482 of 2000 which arose out of Sheosagar (Baddi) P.S. Case No. 0023 of 1997 registered under Section 364A of the Indian Penal Code (in short 'IPC').

2. On the basis of the written information (Exhibit '1' of the informant (PW-6)), a case bearing no. 0023 of 1997 was instituted in Sheosagar Police Station against unknown accused persons under Section 364A IPC. The investigation was taken up and after investigation, the I.O. submitted first charge-sheet bearing no. 08 dated 25.06.1997 and investigation was kept pending against some of the accused. After investigation, police submitted a supplementary chargesheet against the accused persons under Sections 364A and 120B/34 IPC. Cognizance of the



offences was taken on 11.08.1997 whereafter the records were committed to the court of sessions where the charges were framed under Section 364A/34 IPC and explained to the accused persons-appellants who pleaded not guilty and claimed to be tried.

3. On behalf of the prosecution, seven witnesses were examined. The written report (Exhibit '1'), two letters written by the victim (Exhibits '2' and '2/1') and signature of witnesses on deposition under Section 164 CrPC (Exhibit '3') were marked without objection. Four letters were marked 'X' to 'X/3' for identification.

4. After closure of prosecution evidence, the statement of accused persons were recorded under Section 313 CrPC. The defence neither examined any witness nor produced any documentary evidence.

5. The learned trial court having analysed the prosecution evidences, held that the victim (PW-7) had not stated regarding the complicity of Kalawati Devi (accused no. 3), Shri Bhagwan Tiwari (accused no. 10) and Dev Raj Tiwari (accused no. 11) in his kidnapping and there is no whisper regarding their participation in this occurrence. Hence, accused nos. 3, 10 and 11 were not found guilty and they have been acquitted of the charges levelled against them. The other accused persons, namely, Shiva



Nand Bindh (A1), Ravindra Choubey (A2), Arjun Ram (A4), Lalan Paswan s/o Bali Ram Paswan (A5), Lalan Paswan s/o Late Ram Charitar Paswan (A6), Ramakant Paswan (A7), Lok Nath Paswan (A8) and Suresh Ram (A9) have been held guilty for the offences under Section 364A/34 IPC. Hence, they have been convicted for the said offences and ordered to undergo rigorous imprisonment for life. No fine has been imposed by way of sentence.

Analysis of Prosecution Evidences

6. Manoj Sah (PW-1) and Upendra Sah (PW-2) have been declared hostile as they had not supported the prosecution case. Ranjan Tiwari, son of Rameshwar Tiwari (PW-3) came to know about the kidnapping of Om Prakash Pandey (PW-7) on the next day but he did not suspect anyone and he did not identify any of them.

7. Prabha Devi (PW-4) wife of Harendra Prasad has stated that she was not investigated by police. PW-4 has also been declared hostile.

8. Shiv Kumari Devi (PW-5) is the mother of the victim who has stated that her son Om Prakash had gone to see the drama and at 03:00 A.M. (morning), he was going to sleep with his father at dalan. PW-5 has stated that when her son was knocking the door



of *dalan*, some persons came to him asking about the road on which her son went to show them the road. She claimed that her son was taken away from there. In the morning she started search of her son then her husband told her that perhaps, her son has been taken away. This witness is not an eye witness and she has stated on the basis of what she was told by her husband.

9. Ram Bachan Pandey (PW-6) is the father of the victim (PW-7). He has stated that the occurrence is of the night of 27.03.1997. He was sleeping at his *dalan* and the villagers were playing a drama in the village. His son Om Prakash @ Mantu had gone to see the drama and about 02:30 to 03:00 A.M. (night hours), he came at the *dalan* and asked PW-6 to open the door. PW-6 opened the door, in the meantime, he heard that some people were saying to show them the road going to Raipur village and his son (PW-7) went to show them the road. PW-6 waited for his son at *dalan* for half an hour and when he did not return, he closed the door thinking that his son might have gone to sleep in the female portion. PW-6 also slept. In the morning at 08:00 A.M., he got information that Mantu (PW-7) had not taken tea so he should be sent whereafter the search of Mantu started and on not finding him, information was given to Baddi Police Station in the evening



at 3-3:30 P.M. PW-6 has proved the written information which was in his writing and signature as Exhibit '1'.

10. PW-6 has stated in his examination-in-chief that the kidnapers of Mantu had sent him six letters demanding a sum of Rs.4,00,000/- as ransom, at last they had asked for Rs.2,00,000/-. He claimed that out of those six letters, two letters were written by his son Mantu in his hand writing and signature. He proved those two letters in the writing of PW-7 as Exhibit '2' and '2/1' respectively. The other four letters were said to be in the hand writing of the kidnapers which were kept for identification as Exhibits 'X/A' and 'X/B'. PW-6 claimed that with the letter dated 04.04.1997 demanding the ransom, a half cut note of Rs.2/- was also sent with instruction that the ransom amount be handed over to the person who will bring the another part/portion of the note of Rs.2/-. PW-6 has stated that after 10-11 days on 07.04.1997, his son was recovered by police from village Turki, P.S. Simri in the raid. One person, namely, Shiva Nand Bind of Village Bilaspur was also arrested. PW-6 came to know that behind the occurrence, the co-villagers Dev Raj Tiwari, Shri Bhagwan Tiwari and Ravindra Choubey with 3-4 other persons were involved. He was told about 11 persons. In paragraph '5' of his deposition, PW-6 has stated that Mantu on his return did not tell the name of kidnapers,



this witness has then on his own stated that he does not remember whether Mantu had told him the name of the kidnappers or not. In court, PW-6 identified the accused Dev Raj Tiwari but did not identify the another accused Ravindra Choubey.

11. In his cross-examination, PW-6 has stated that his son was not recovered in his presence. He has further stated in paragraph '8' of his evidence that police had not told him anything about any of the accused persons. In paragraph '11' of his cross-examination, he has stated that he had not tried to know the name of the accused persons who were involved in kidnapping at his own level.

12. The victim, Om Prakash Pandey (PW-7), is the star witness of this case. PW-7 has stated in his examination-in-chief that when he reached at his dalan alone and knocked the door, his father opened the door and went to sleep. According to him, in the meantime, four persons came at his door and asked him about the road going to village Raipur Chaur, on this, he went to show them the road at a distance of about 100 yards South to his dalan, he showed them the road but the moment he wanted to take a turn towards his dalan, they gagged his mouth and brandish a pistol at him. They threatened PW-7 to kill if he would not accompany them. PW-7 claimed that he went on mountain with them. They



were beating him and had placed a cloth at his eyes. They took him to a mountain where he was kept for the whole day. They were talking that a sum of Rs.4 lakhs is to be taken from his father. In the evening, they took him down to a village where he was given food to eat. He was kept in the village for whole night, on the next night, he was taken to another village where he was kept for 10 days. Kidnappers were talking themselves that they would have no difficulty in getting money. Money would be provided through Dev Raj Tiwari and Shri Bhagwan Tiwary and Ravindra Choubey will do everything fine. PW-7 states that the kidnappers were talking about themselves taking names of Arjun Chamar, Suresh Chamar, Lok Nath, Ramakant and Lalan Paswan, he did not remember other names. In paragraph '2' of his evidence, PW-7 has stated that police had conducted a raid in the said village and he was recovered from a house. One Shiva Nand Bind who was keeping eyes over him was also arrested and police had seized one gun and three cartridges from the said place.

13. In paragraph '3', PW-7 has stated that police brought him to Chenari Police Station, later on, he came to know that he had been recovered from village Turki. His statement was recorded in Chenari Police Station. On the next day, he was brought before the Dy.S.P. from where he was taken to Sheosagar Police Station



and there also Darogaji had inquired from him. In paragraph '4' of his examination-in-chief, this witness has stated that the I.O. had brought him to the court for recording of statement and he had given his statement before the Magistrate after reading the same. He identified his signature which was marked as Exhibit '3'.

14. In course of his cross-examination, this witness has stated that he came to know about the name of village from public after the raid was conducted but he cannot say from whom he came to know about the name of the village. In paragraph '10' of his cross-examination, he has stated that at the time of his recovery, there were about 20 policemen and 100 people from the public. He has stated that police had brought him and the arrested person with the seized arms to police station. Public had not gone to the police station and he did not remember that in his presence police had taken signature of any member of the public or the accused.

15. He has further stated that Bilaspur village is situated at 12-13 kilometers from his village. Ravindra Choubey accused is married to the *nanad* of his sister and is a resident of village Bilaspur. He had never gone to the village Bilaspur. He had seen Ravindra Choubey after 2-4 days of his kidnapping in village Turki. He states that he was brought to Turki village in night, his



eyes were tied, his eyes were opened sometime, he was made to sit and urinate in a pot in the room. Shiva Nand Bind was always there with him and Lalan Paswan was coming sometime to serve him food, he used to sit for half an hour and he is a resident of U.P. He had seen the face of Lalan Paswan. PW-7 has stated that except the face of Lalan Paswan of village Turki, he had seen the face of Ravindra Choubey. He did not know the father's name and village name of Lalan Paswan of Village Bilaspur. Lok Nath Paswan, Shiva Nand Bind, Arjun Ram, Suresh Ram and Ramakant Paswan.

16. In paragraph '14' of his cross-examination, he has stated that Shiva Nand Bind used to sleep in his room with him sometime but he never tried to escape from the room, he never raised any *hulla*, sometimes, he was being taken in the field to defecate in the night at a distance of 100 yards from the said house and at that time, his eyes were open. He was being taken in the night at 12-01:00 in the filed and when he used to sit to defecate, from both the sides at a distance of 10-10 steps, the accused persons kept standing there with gun. He never tried to escape from there. He was being provided a blanket in the room.

17. PW-7 has further stated that when police conducted raid in the evening at 04-05:00 P.M., Shiva Nand Bind was with him. He did not try to escape. Shiva Nand Bind did not ask from



the roof (kotha) as to who was knocking the door. PW-7 states in his cross-examination that he cannot say whether villagers had come on seeing the police. He came down first and 20 minutes thereafter Shiva Nand Bind came with his hands up. Within 10-20 minutes, about 100 villagers came at the door. In his cross-examination, he states that he was straightaway taken to Chenari Police Station where he had given his statement at 08:00 pm (night) and put his signature. For the whole night, he stayed in Chenari Police Station. Prior to that Sheosagar Police had also arrived there. In paragraph '16' of his cross-examination, he has stated that police never told him to come to identify the accused in parade.

18. In paragraph '20' of his cross-examination, PW-7 has stated that the four persons who had kidnapped him were unknown. In paragraph '22' of his evidence, he has stated that neither in his statement before police nor the Judicial Magistrate he had named Shri Bhagwan Tiwari and Dev Raj Tiwari.

Submissions on behalf of the Appellants

19. Learned counsel for the appellants have assailed the judgment under appeal (hereinafter referred to as the 'impugned judgment') on various grounds. It is submitted that the solitary witness of this case, who is also a star witness, has not been able to



prove the place of his recovery. He has not identified the four persons who had kidnapped him and in this case, because the Investigating Officer (I.O) has not been examined by the prosecution, the prosecution case that PW-7 was recovered from village Turki could not be duly proved and non-examination of I.O. in this case has caused prejudice to the defence. Learned counsel further submits that neither PW-6 nor PW-7 has stated that there was any threat to the life of PW-7 and at any point of time, PW-7 was threatened to be killed if ransom amount is not paid, thus, in view of the catena of judgments of the Hon'ble Supreme Court, a case under Section 364A IPC is not proved beyond all reasonable doubts.

20. Learned counsel further submits that in this case, PW-6 has introduced two letters said to have been written by PW-7 but PW-7 has never stated about writing of any letter at the instance of the kidnappers. His statement under Section 164 CrPC has not been duly proved and marked exhibit and it is only the signature of PW-7 which has been marked as Exhibit '3'. The four other letters which are said to have been written by the kidnappers could not be exhibited in course of trial.

21. Learned counsel further submits that in this case, the attention of the accused persons-appellants were not drawn



towards the incriminating materials which were brought by the prosecution in course of their statements under Section 313 Cr.P.C. Thus, the accused persons were deprived of a valuable right conferred upon them under Section 313 Cr.P.C. to explain themselves.

Consideration

22. We have heard learned counsel for the appellants and learned Additional P.P. for the State. The trial court records have been placed before us and we have perused the same.

23. From the prosecution evidences placed before us, we find that the victim Om Prakash Pandey has deposed as PW-7. He is the star witness of this case. His father, namely, Ram Bachan Pandey is the informant and has deposed as PW-6. We will first deal with the evidences of PW-6 and PW-7 and then this Court will examine as to whether the evidence of PW-6 and PW-7 would prove the guilt of the accused-appellants beyond all reasonable doubts so as to maintain their conviction under Sections 364A/34 IPC. According to PW-6, when his son (PW-7) knocked the door of the *dalan* at 2:30-3:00 am (morning) and asked him to open the door, he opened the door and heard that someone was telling his son to show him the route leading to Raipur village and his son went with that person. PW-6 has not stated to have seen that



person with whom his son had gone. He has also not stated about the number of persons with whom PW-7 had gone to show them the route. After waiting for half an hour when his son did not return, PW-6 did not go in search of him or to enquire about him. This cannot be a natural conduct of a father, particularly when his son has gone with an unknown person in the midnight. PW-6 has stated that he closed the door after half an hour and thought that his son had gone to sleep in the family portion of the house but this witness has not stated that there was any separate door for the family portion and the I.O. has not been examined in this case, therefore, the description of the house and the *dalan* of PW-6 has not come in the course of trial. In the morning at 8:00 am, he got information from the family portion of the house that the victim boy had not gone to take his tea, whereafter PW-6 went in search of his son.

24. It has come in evidence that on the said date, a drama was being played in the village in which a large number of villagers had assembled to watch the drama, the victim son of PW-6 had also gone to watch the drama. From this part of the evidence, it appears that the statement of PW-6 that his son returned at 2:30-3:00 am and knocked the door of the *dalan* to open is doubtful. Had he returned in the midnight, knocked the



door of the *dalan* and PW-6 opened the door but then he heard someone asking his son to show him the road, being father of the boy (PW-7), PW-6 would have definitely tried to know as to who are those persons with whom PW-7 had gone. It is highly doubtful that in such circumstance, when the son has gone with someone unknown in the midnight, the father would close the door after half an hour and would go for a sleep.

25. This Court further finds that the information with regard to kidnapping of the boy was given to the Police Station on 28.03.1997 at 6:30 pm i.e. with a delay of at least 10 hours. PW-6 submitted a written report to the Officer-in-Charge of Baddi Police Station in which his statement was that his son reached *dalan* at 3:00 am and asked him to open the door whereupon PW-6 wanted to open the door but heard the voice of some persons who asked his son to show them the road leading to Raipur village. In his written report, PW-6 did not say that he opened the door and then closed it after waiting for his son for half an hour. Therefore, this Court finds that in course of trial, PW-6 has made some deviations from his statement in the written report, he is not consistent.

26. In further part of his evidence, PW-6 has stated that he got six letters for ransom. Out of six letters, two letters were written in the hand of his son and the rest were written by the



kidnappers. The two letters written by his son (PW-7) have been proved as Exhibit '2' and '2/1' respectively, there is no proof of dispatch or mode of service of letters. PW-7 has not stated in his examination-in-chief that the kidnappers asked him to write a letter for ransom. PW-7 has not stated that who were the persons with whom he had gone to show the road leading to Raipur village. PW-7 has not identified any of these appellants present with those persons who had requested PW-7 to show them Raipur Road. As regards other four letters, PW-6 could not prove those letters and the mode of receipt of the letters. He talks of receipt of one half-torn note of Rs. 2 but neither any of the letters nor half-torn note were seized by the I.O. in course of investigation nor those were proved in course of trial. Thus, the statement of PW-6 with regard to receipt of six letters and a half-torn note of Rs. 2 is wholly unreliable and no credence may be given to these statements.

27. PW-6 has further stated that after 10-11 days of the occurrence, Police had recovered his son from village Turki under Police Station Chenari from the house of Lalan Paswan. He came to know about this from Police but it is not known as to who was the said Police Officer who disclosed it to PW-6. Prosecution has neither proved the description of the house of Lalan Paswan in



village Turki or arrest of Shiva Nand Bind from the said place. No recovery memo of the victim boy has been proved in course of trial. In paragraph '5' of his evidence, PW-6 has clearly stated that on his return, Mantu (victim boy) had not told him about the accused persons, this witness has later on said that he does not remember whether Mantu had told him the name of the kidnappers accused or not. This witness did not identify the accused who were not in attendance, he also failed to identify Rabindra Chaubey who was present in court. He identified only Dev Raj Tiwary because he was his co-villager. He has admitted in his cross-examination that he had seen the police report and had come to know about the accused. He had not tried to find out as to who were involved in the kidnapping of his son. It is evident from the evidence of PW-6 that the latter part of his testimony is based on his information derived from Police. He has not stated that any of the appellants ever tried to contact him and demanded ransom by keeping his son under threat of life and hurt.

28. So far as PW-7 is concerned, he is himself the victim. He has disclosed in course of trial that four persons had come to the door of the *dalan* and asked him about the road going to Raipur village. PW-7 has not identified those four persons and it is not the case of the prosecution that these appellants or anyone of



them were either involved in taking away of PW-7 or were seen with those four persons who had asked PW-7 to show them the Raipur Road.

29. PW-7 has stated that he heard the kidnappers talking about a demand of Rs. 4 lakhs and they hoped that they would get money through Dev Raj Tiwary and Bhagwan Tiwary. PW-7 also heard the kidnappers saying that Rabindra Chaubey has done everything right. PW-7 heard talking them, taking their name as Arjun Chamar, Suresh Chamar, Lok Nath, Ramakant and Lalan Paswan. He did not remember other names. PW-7 has stated that in course of raid conducted by Police, the person who was keeping eyes on him, namely, Shiva Nand Bind was arrested from a house and in course of search of the said house, Police seized one gun and three cartridges but this Court finds that no seizure list of the gun and three cartridges has been proved in course of trial. Even the arrest memo of Shiva Nand Bind, the description of the house, from which PW-7 was recovered, and Shiva Nand Bind was arrested has not been proved in course of trial.

30. This Court further finds that according to PW-7, after his recovery, he along with Shiva Nand Bind was taken to Chenari Police Station on 07.04.1997 where the statement of PW-7 was recorded, he was asked to read his statement. He had stayed



for the whole night in Chenari Police Station. On the next day, he was produced before the Dy.S.P. and thereafter he was brought to Sheosagar Police Station where also the Darogaji had enquired from him. The first statement of PW-7 was recorded in Chenari Police Station but that has not been placed in course of trial. He was also enquired at Sheosagar Police Station but even that has not been brought by way of evidence. In such circumstance, this Court is of the considered opinion that the prosecution has not come out clean and the immediate information which was furnished by PW-7 to Chenari Police Station has been withheld. He met his father (PW-6) next day but according to PW-6 his son (PW-7) had not disclosed the name of the kidnappers. The Police officer of Chenari Police Station who recorded the statement and the I.O. of the case from Sheosagar Police Station have not been examined in course of trial. Non-examination of I.O. has definitely caused prejudice to the appellants because in his absence, the defence was unable to elicit important information as to what were the earliest version of PW-7 before Police.

31. This court further finds that PW-7 was produced before the learned Magistrate for recording his statement under section 164 Cr.P.C. only on 29.04.1997. Thus, after a delay of 22 days, the statement of the victim was recorded by the learned



Magistrate. Prosecution has only proved the signature of PW-7 on the statement under Section 164 Cr.P.C. It seems that no attempt was taken to get exhibited the statement under Section 164 Cr.P.C. in accordance with law. PW-7 has stated in his cross-examination that he had made statement in court on the direction of Daroga and he had come to know about the name of village Turki from public but he does not know the person from whom he came to know the name of village Turki. PW-7 has reiterated in paragraph '11' that Police had recorded his statement at Chenari Police Station and he had put his signature on the paper on which statement had been recorded.

32. From the evidence of PW-7, it is clear that he does not state about the house from which he was recovered. At one place he has stated that at the time of his recovery about 20 Policemen and 100 members of the public had assembled but this Court finds that in the trial the prosecution has not brought any witness much less any evidence to prove that it was the house of Lalan Paswan of village Turki from where the recovery was made. PW-7 has stated that Lalan Paswan used to serve him food sometimes and was sitting for half an hour in the room, he was resident of U.P. In paragraph '12' of his evidence, he has stated



that he had not seen the face of Shiva Nand Bind during the said period and till now.

33. To this Court, it appears that PW-7 would fall in the category of witness who would neither be wholly reliable nor wholly unreliable, therefore, his evidence is required to be examined very carefully and with all circumspection and care. The fact that he made statement before Chenari Police immediately after his recovery but that has been withheld by the prosecution, unavailability of the description of the house from where recovery was made, there being no arrest memo of Shiva Nand Bind showing him apprehended from the said house and then there being no proof of seizure of gun and three cartridges, this Court would be of the opinion that it would not be safe to base conviction of the appellants on the sole testimony of PW-7.

34. In the case of **Shaik Ahmed vs. State of Telangana** reported in **(2021) 9 SCC 59**, the Hon'ble Supreme Court has dealt with the essential ingredients of Section 364A IPC. This Court would reproduce the relevant paragraphs 12 to 15 of the judgment hereunder for a ready reference:-

“**12.** We may now look into section 364-A to find out as to what ingredients the Section itself contemplate for the offence. When we paraphrase Section 364-A following is deciphered:



(i) “Whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction”

(ii) “and threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt,

(iii) or causes hurt or death to such person in order to compel the Government or any foreign State or international inter- governmental organisation or any other person to do or abstain from doing any act or to pay a ransom”

(iv) “shall be punishable with death, or imprisonment for life, and shall also be liable to fine.”

The first essential condition as incorporated in Section 364-A is “whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction”. The second condition begins with conjunction “and”. The second condition has also two parts, i.e., (a) threatens to cause death or hurt to such person or (b) by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt. Either part of above condition, if fulfilled, shall fulfill the second condition for offence. The third condition begins with the word “or”, i.e., or causes hurt or death to such person in order to compel the Government or any foreign State or international inter- governmental organisation or any other person to do or abstain from doing any act or to pay a ransom. Third condition begins with the words “or causes hurt or death to such person in order to compel the Government or any foreign state to do or abstain from doing any act or to pay a ransom”. Section 364-A contains a heading “kidnapping for ransom, etc.” The kidnapping by a person to demand ransom is fully covered by Section 364-A.



13. We have noticed that after the first condition the second condition is joined by conjunction “and”, thus, whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction and threatens to cause death or hurt to such person.

14. The use of conjunction “and” has its purpose and object. Section 364-A uses the word “or” nine times and the whole section contains only one conjunction “and”, which joins the first and second condition. Thus, for covering an offence under Section 364-A, apart from fulfillment of first condition, the second condition, i.e., “and threatens to cause death or hurt to such person” also needs to be proved in case the case is not covered by subsequent clauses joined by “or”.

15. The word “and” is used as conjunction. The use of word “or” is clearly distinctive. Both the words have been used for different purpose and object. *Crawford on Interpretation of Law* while dealing with the subject “disjunctive” and “conjunctive” words with regard to criminal statute made following statement:

“...The court should be extremely reluctant in a criminal statute to substitute disjunctive words for conjunctive words, and vice versa, if such action adversely affects the accused.”

35. In the present case there is no eyewitness to the kidnapping of PW-7, the whole case is based on circumstantial evidences and further there is no clinching evidence with regard to the participation of the appellants in the kidnapping and detention of PW-7 for ransom. The prosecution is required to establish a chain of unbroken events irresistibly pointing to the guilt of the accused and none other. In this regard, the paragraph ‘14’ and ‘15’ of the judgment rendered by the Hon’ble Supreme Court in the



case of **Rajesh and Another vs. State of Madhya Pradesh** reported in **2023 SCC OnLine SC 1202** are being reproduced hereunder for a ready reference.

“14. A conspectus of the prosecution's case clearly reveals that it is poised entirely on circumstantial evidence as there was no eyewitness to the kidnapping and murder of Ajit Pal. In a case resting on circumstantial evidence, the prosecution must establish a chain of unbroken events unerringly pointing to the guilt of the accused and none other [See *C. Chenga Reddy v. State of A.P.*¹, *Ramreddy Rajesh Khanna Reddy v. State of A.P.*², *Majenderan Langeswaran v. State (NCT of Delhi)*³ and *Sharad Birdhichand Sarda v. State of Maharashtra*⁴]. As long back as in the year 1952, in *Hanumant v. State of Madhya Pradesh*⁵, a 3-Judge Bench of this Court observed as under:

‘It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.’

15. Again, in *Padala Veera Reddy v. State of Andhra Pradesh*⁶, this Court affirmed that when a case rests solely upon circumstantial evidence, such evidence must satisfy the following tests:

1. (1996) 10 SCC 193
2. (2006) 10 SCC 172
3. (2013) 7 SCC 192
4. (1984) 4 SCC 116
5. (1952) 2 SCC 71
6. 1989 Supp (2) SCC 706



- ‘1. The circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established;
2. Those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;
3. The circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and
4. The circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.’”

36. Yet another aspect of the matter remains to be discussed. It appears that when the statements of the accused were recorded under Section 313 Cr.P.C., their attention was not drawn towards all the incriminating circumstances and the materials which were brought by the prosecution against them. All the accused were asked the same and one question repeatedly. For the sake of ready reference, this Court would reproduce one sample copy of the statement under Section 313 Cr.P.C. as under:-

“प्रश्न :- क्या गवाही का बेयान सुना है ?

उत्तर :- जी हाँ।

प्रश्न :- आपलोगो के विरुद्ध साक्ष्य है कि दिनांक 27/3/97 की रात्री में ओम प्रकाश पाण्डेय उर्फ मन्दु अपने गांव में झामा देखने गया था एवं झामा देखकर रात्रि सुबह 2 ½ -3 बजे दिनांक 28-3-97 को घर वापस



आया तो आपलोग एक सामान्य आशय से अग्रसरण में उसका अपहरण कर दिया तथा फिरौती की माँग करने लगे ?

उत्तर :- जी नहीं।

प्रश्न :- यह भी साक्ष्य है कि पुलिस द्वारा ओमप्रकाश पाण्डेय उर्फ मन्दु को ललन पासवान के घर से कुछ अपहरणकर्ताओं के साथ बरामद किया गया ?

उत्तर :- जी नहीं।

प्रश्न :- सफाई में कुछ कहना है ?

उत्तर :-”

37. From a bare reading of the statement under Section 313 Cr.P.C. put to the accused, it would appear that many incriminating circumstances were not at all put to them. For example, in case of Rabindra Chaubey, PW-7 has stated that he had heard the kidnappers talking about him that he had done everything fine. This incriminating circumstance was not put to Rabindra Chaubey. Similarly, while putting question no.2, a vague question was put to the accused persons saying that Om Prakash Pandey @ Mantu was recovered from the house of Lalan Paswan with some kidnappers. Who is that Lalan Paswan and who were those kidnappers said to have been arrested from his house are not disclosed. While putting question to Lalan Paswan of village Turki, again a stereotype question was put to him and he was told that Om Prakash Pandey @ Mantu has been recovered from the house of Lalan Paswan with some kidnappers. If it was his house from where the recovery was made, the prosecution would have



clearly informed him that it was his house from where the recovery was made but that was not done. The circumstance that Shiva Nand Bind was arrested from the house while recovering PW-7 and the Police had also seized one gun and three cartridges were not put to the accused persons.

38. The Hon'ble Supreme Court as well as this Court has repeatedly highlighted the importance of a statement under Section 313 Cr.P.C. and the purpose behind giving that opportunity to an accused. In this regard, the Hon'ble Supreme Court in the case of **Sukhjit Singh Vs. State of Punjab** reported in (2014) 10 SCC 270 has, while putting emphasis on the compliances with the requirement of Section 313 Cr.P.C., observed in paragraph '12' and '13' as under:-

“12. In *Hate Singh Bhagat Singh v. State of Madhya Bharat*⁴, Bose, J. speaking for a three-Judge Bench highlighting the importance of recording of the statement of the accused under the Code expressed thus: (AIR pp. 469-70, para 8)

“8. Now the statements of an accused person recorded under Sections 208, 209 and 342, Criminal Procedure Code are among the most important matters to be considered at the trial. It has to be remembered that in this country an accused person is not allowed to enter the box and speak on oath in his own defence. This may operate for the protection of the accused in some cases but experience elsewhere has shown that it can also be a powerful and impressive weapon of defence in the hands of an innocent man. The statements of the accused recorded by the Committing Magistrate and the Sessions Judge are intended in India to take the place of what in England and in America he would be free to state in his own way in the witness box.”

4. AIR 1953 SC 468: 1953 Cri LJ 1933



13. The aforesaid principle has been reiterated in *Ajay Singh v. State of Maharashtra*⁵ in following terms: (SCC pp. 347-48, para 14)

“14. The word ‘generally’ in sub-section (1)(b) does not limit the nature of the questioning to one or more questions of a general nature relating to the case, but it means that the question should relate to the whole case generally and should also be limited to any particular part or parts of it. The question must be framed in such a way as to enable the accused to know what he is to explain, what are the circumstances which are against him and for which an explanation is needed. The whole object of the section is to afford the accused a fair and proper opportunity of explaining circumstances which appear against him and that the questions must be fair and must be couched in a form which an ignorant or illiterate person will be able to appreciate and understand. A conviction based on the accused's failure to explain what he was never asked to explain is bad in law. The whole object of enacting Section 313 of the Code was that the attention of the accused should be drawn to the specific points in the charge and in the evidence on which the prosecution claims that the case is made out against the accused so that he may be able to give such explanation as he desires to give.”

39. In the case of **Sharad Birdhichand Sarda vs. State of Maharashtra** reported in **(1984) 4 SCC 116**, the Hon’ble Supreme Court has observed in paragraph 145 as under:-

“**145.** It is not necessary for us to multiply authorities on this point as this question now stands concluded by several decisions of this Court. In this view of the matter, the circumstances which were not put to the appellant in his examination under Section 313 of the Criminal Procedure Code, 1973 have to be completely excluded from consideration”

5. (2007) 12 SCC 341 : (2008) 1 SCC (Cri) 371



40. On a cumulative reading of the evidences discussed hereinabove, this Court is of the considered opinion that prosecution has failed to bring cogent evidences to prove the guilt of the accused-appellants beyond all reasonable doubts. The essential ingredients of the offence under Section 364A IPC is lacking and the link between the kidnapping of PW-7 and role of the accused-appellants in connection with the occurrence in question could not be fully established so as to reach to a conclusion of guilt against the appellants.

41. In result, the impugned judgment of the trial court is set aside. The appellants are acquitted of the charges giving them benefit of doubt.

42. The appellants in the above appeals except Cr. Appeal (DB) No. 1435 of 2017 and Cr. Appeal (DB) No. 59 of 2018 are on bail. They are discharged from the liability of their bail bonds.

43. The appellants, Lalan Paswan, Son of Late Ram Charitar Paswan (Cr. Appeal (DB) No. 1435 of 2017) and Shiva Nand Bind (Cr. Appeal (DB) No. 59 of 2018) are said to be in custody. They shall be released forthwith if not wanted in any other case.

44. All the appeals are allowed.

(Rajeev Ranjan Prasad, J)

(Shailendra Singh, J)

Sushma2/Rishi-

AFR/NAFR	AFR
CAV DATE	01.03.2024
Uploading Date	19.04.2024
Transmission Date	19.04.2024

