

MOTILAL YADAV

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v.

STATE OF BIHAR

(Criminal Appeal No. 2478 of 2014)

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NOVEMBER 25, 2014

[VIKRAMAJIT SEN AND PRAFULLA C. PANT, JJ.]

Penal Code, 1860 – ss. 364A/34 and 120B/364A – Kidnapping of six year old boy for ransom – Conviction and sentence of accused u/ss. 364A/34 and 120B/364A by court below – On appeal, held: Order passed by the High Court was not cryptic or without discussion of evidence on record – On facts, not holding of test identification parade not fatal to the prosecution case – Thus, order passed by High Court upheld – Evidence.

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Dismissing the appeal, the Court

HELD: It cannot be said that the impugned order is cryptic and without discussion of evidence on record. The High Court in the impugned order discussed the evidence on record as to how from the corroboration of the statements of the witnesses the entire prosecution story and the charge stood proved. The testimony of PW-3, father of the victim is natural as he explained in what manner he reached place 'H', and he had enough time to identify the accused who accompanied him to the persons who took money from him whereafter the victim was released. In view thereof, it cannot be said that not holding of test identification parade was fatal for the prosecution. [Paras 10, 11, 14][571-D-E; H; 572-A; 573-C]

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- A *Rama and others v. State of Rajasthan* (2002) 4 SCC 571; *Badam Singh v. State of M.P.* (2003) 12 SCC 792; *Prasad alias Hari Prasad Acharya v. State of Karnataka* (2009) 3 SCC 174: 2009 (1) SCR 1089 ; *Ram Ratan v. State of Rajasthan* (2010) 13 SCC 509; *Kanan and others v. State of Kerala* (1979) 3 SCC 319; *Ravi Kumar v. State of Rajasthan* (2012) 9 SCC 284 : 2012 (10) SCR 229; *R. Shaji v. State of Kerala* (2013) 14 SCC 266 : 2013 (3) SCR 1172; *Ashok Debbarma alias Achak Debbarma v. State of Tripura* (2014) 4 SCC 747 – referred to.
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Case Law Reference:

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|---|-------------------|-------------|---------|
| D | (2002) 4 SCC 571 | referred to | Para 8 |
| | (2003) 12 SCC 792 | referred to | Para 8 |
| | 2009 (1) SCR 1089 | referred to | Para 8 |
| E | (2010) 13 SCC 509 | referred to | Para 8 |
| | (1979) 3 SCC 319 | referred to | Para 10 |
| | 2012 (10) SCR 229 | referred to | Para 11 |
| | 2013 (3) SCR 1172 | referred to | Para 12 |
| F | (2014) 4 SCC 747 | referred to | Para 14 |

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 2478 of 2011.

- G From the Judgment and Order dated 05-11-2012 of the High Court of Patna in CRLA No. 208 of 2006.

D.N. Goburdhan(AC), Prabal Bagchi, Abhishek Aggarwal, Advs. for the Appellant.

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Redreshwar Singh, Samir Ali Khan Advs. for the Respondent. A

The Judgment of the Court was delivered by

PRAFULLA C. PANT, J. 1. Leave granted. B

2. This appeal, by special leave, is directed against judgment and order dated 5.11.2012, passed by the High Court of Judicature at Patna, whereby the conviction of the accused-appellant Motilal Yadav recorded under Section 364A read with Section 34 and Section 120B read with Section 364A IPC by learned Additional Sessions Judge, ETC III, Bhagalpur, in Sessions Case No. 1053 of 2003/Trial No. 12 of 2004, is affirmed. The accused-appellant, along with other co-accused, has been convicted and sentenced to imprisonment for life and directed to pay fine of Rs.5,000/- under Section 364A read with Section 34 IPC, and further sentenced to imprisonment for a period of two years under Section 120B read with Section 364A IPC. C D

3. Heard learned amicus curiae for the appellant and learned counsel for the respondent. E

4. Prosecution story in brief is that PW-6, Subhash Chandra Singh, gave a written information at Police Station, Kahalgaon, on 23.4.2002 at 8.05 a.m. that his grandson Sagar Kumar (PW-5) has been kidnapped. The informant narrated in the written report that the victim (Sagar Kumar), aged six years, along with his sister PW-4 Riya Kumari, aged four years, was going to St. Joseph NTPC School, Kahalgaon in a rickshaw pulled by PW-1 Anil Ram. The informant further told that the rickshaw puller told him that one person came to the rickshaw and took the victim after telling him that his father was calling him at the railway station. On receiving information, the informant immediately rushed to the location where the F G

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A rickshaw puller Anil Ram (PW-1) was waiting for the victim's return. An FIR No. 117/2002 was recorded at the police station and the investigations were taken up by the Investigating Officer.

B 5. Investigation revealed that after one day of kidnapping
of the child, a demand of Rs.10.00 lakhs was made by
someone on phone disclosing his name as Prem Prakash
Yadav (co-accused) for release of the boy. When several calls
were made, on 17.5.2002 the victim's parents agreed to pay
C Rs.6.00 lakhs according to their economic condition. PW-3,
Sourav Kumar (father of the victim) passed on the phone
number of the caller to the police. The kidnappers called father
of the victim to Haldwani (Uttarakhand), on which the witness
(PW-3) desired to know as to by what route he could reach
D there. The caller informed the father of the victim to come by
Farakka Express to Lucknow, and from there by a meter gauge
train to Lal Kuan from where he would be getting tempo (three
wheeler) to reach Haldwani. Accordingly PW-3 Sourav Kumar
reached Haldwani on 21.5.2002 with money, and stayed at
E Kamta Hotel and waited for the caller's messenger from where
he was taken by the present appellant (Motilal Yadav) to the
side of rivulet near Krishi Utpadan Bazar Samiti (Haldwani).
Two persons (co-accused) were already waiting there. After
making enquiry as to the amount brought by the witness (PW-
F 3), two of the accused persons took the bag. Thereafter PW-
3 Sourav Kumar was taken to Haldwani Bareilly Road where
the victim was handed over to his father. Victim's father, along
with his recovered son, reached back Kahalgaon on 25.5.2002,
and narrated the entire story to the police. After collecting
G evidence and interrogating the witnesses, prosecution filed
charge-sheet against seven accused, namely, Raghunath
Yadav, Prem Kumar Yadav @ Tuntun Yadav, Motilal Yadav
(present appellant), Bina Devi, Bijay Yadav, Prem Prakash
H Yadav and Mamta Devi.

6. It appears that the trial court, after framing the charge and recording evidence, on conclusion of trial, found all the above seven accused guilty of charge of offences punishable under Section 364A read with Section 34 IPC and under Section 120B read with Section 364A IPC, and after hearing of the matter on sentence, each one of them was sentenced to imprisonment for life and directed to pay fine of Rs.5,000/- under Section 364A read with Section 34 IPC, and further imprisonment for a period of two years under Section 120B read with Section 364A IPC.

7. The convicts challenged the order of the trial court before the High Court. Criminal Appeal (DB) No. 208 of 2006 was filed by accused Raghunath Yadav, Prem Kumar Yadav @ Tuntun Yadav and Motilal Yadav, Criminal Appeal (DB) No. 232 of 2006 was filed by Bina Devi, Bijay Yadav and Prem Prakash Yadav, and Criminal Appeal (DB) No. 246 of 2006 was filed by the accused Mamta Devi. All the three appeals were disposed of by the High Court by its common order dated 5.11.2012 which has been challenged before us in the present appeal by accused/convict Motilal Yadav.

8. Mr. D.N. Goburdhan, learned Amicus Curiae, on behalf of the appellant, argued before us that the High Court has decided the criminal appeals without scrutinizing the entire evidence on record, and as such, the impugned order is liable to be set aside. He referred to the cases of ***Rama and others v. State of Rajasthan***¹, ***Badam Singh v. State of M.P.***², ***Prasad alias Hari Prasad Acharya v. State of Karnataka***³ and ***Ram Ratan v. State of Rajasthan***⁴. We have gone through the cases relied on behalf of the appellant, but we are

¹ (2002) 4 SCC 571

² (2003) 12 SCC 792

³ (2009) 3 SCC 174

⁴ (2010) 13 SCC 509

A of the view that the above mentioned cases are of little help in
the present case, for the reason that neither the impugned order
is cryptic nor without discussion of evidence on record. Statement of each of the witnesses, namely, PW-1 Anil Ram
(Rickshaw Puller), PW-2 Neetu Singh (mother of the victim),
B PW-3 Sourav Kumar (father of the victim), PW-4 Riya Kumari
(sister of the victim), PW-5 Sagar Kumar (victim) and PW-6
Subhash Chandra Singh (informant and grandfather of the
victim), has been discussed at length by the High Court, apart
from discussing the evidence of formal witnesses, namely, PW-
C 7 Ramji Singh (constable), PW-9 Gouri Mohan Mitra and the
Investigating Officer PW-8 Shivjee Singh and PW-10 Anand
Prakash Singh. The High Court has also taken note of the
statement of DW-1 Jawahar Jha. The High Court, after
D discussing the evidence of each of the above mentioned
witnesses, has further discussed the evidence on record as to
how from the corroboration of the statements of the witnesses,
the entire prosecution story and the charge stood proved.

9. PW-1 Anil Ram has corroborated the fact that he was
E taking the children Sagar Kumar and Riya Kumari to the school
when the accused (Prem Yadav), identified by him before the
trial court, took the child by telling him that his father was calling
him at the Railway Station. PW-2 Neetu Singh has
F corroborated that rickshaw puller Anil Ram (PW-1) informed
on phone at 7.15 a.m. about the incident. She has further
corroborated the fact regarding demand of ransom made by
the kidnappers for release of the victim (Sagar Kumar). PW-
G 3 Sourav Kumar is the most important witness of the case
who had opportunity to see most of the accused including the
present appellant (Motilal Yadav) as he went to Haldwani for
release of his minor son from their custody. He (PW 3) has
narrated that after the demand of ransom was made, he agreed
to pay Rs.6.00 lakhs and sought time to make the arrangement
H of money. He further told that on receiving call on 20.5.2002,

he asked the caller as to how he could reach Haldwani on which the caller told about the trains available for Lucknow and Lal Kuan. PW-3 Sourav Kumar, has stated in his evidence that when he reached Haldwani, he stayed in Kamta Hotel. As to the role of the present appellant, the witness (PW-3) has told that the present appellant is the person who enquired from him if he is father of Sagar Kumar, and then took him in a rickshaw by the side of rivulet near Krishi Utpadan Bazar Samiti (Haldwani). The witness has further narrated about the role of the other accused in his statement which we do not think it necessary to discuss here as other convicts are not appellants before us. The witness has given all the details as to how money was taken to the place where his son was released and handed over to him from Haldwani-Bareilly Road. Having gone through the record and the impugned order, we are of the view that the High Court, in the impugned order, has discussed at length the prosecution evidence which was believed by it. We find no force in the argument that the High Court's order is cryptic or brief.

10. Another argument advanced before us is that no test identification parade in the present case was held, as such, the conviction and sentence, recorded by the trial court, has been wrongly upheld by the High Court. In this connection, our attention is drawn to the case of **Kanan and others v. State of Kerala**⁵. In said case, this Court has opined that failure to conduct test identification parade raises serious doubt about the testimony of the witnesses. On going through said case, we find that this Court doubted evidence of a particular witness (PW-25 of said case) who told the Court that he could identify the accused persons (not known to him) who were running away from the scene of occurrence. Contrary to that, in the present case the testimony of PW-3 Sourav Kumar is natural as he

⁵ (1979) 3 SCC 319

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A explained in what manner he reached Haldwani, and he had enough time to identify the accused who accompanied him to the persons who took money from him whereafter the victim was released.

B 11. The evidence as to the identity of a person is admissible under Section 9 of the Indian Evidence Act, 1872. In the case of **Ravi Kumar v. State of Rajasthan**⁶, this Court has opined in paragraph 35 as follows: -

C “.... The court identification itself is a good identification in the eye of the law. It is not always necessary that it must be preceded by the test identification parade. It will always depend upon the facts and circumstances of a given case. In one case, it may not even be necessary to hold the test identification parade while in the other, it may be essential to do so. Thus, no straitjacket formula can be stated in this regard.”

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E 12. In the case of **R. Shaji v. State of Kerala**⁷, regarding the evidential value of the test identification parade, this Court has stated in paragraph 58 as under: -

F “.... The identification parade is conducted by the police. The actual evidence regarding identification is that which is given by the witness in court. A test identification parade cannot be claimed by an accused as a matter of right. Mere identification of an accused in a test identification parade is only a circumstance corroborative of the identification of the accused in court.”

G 13. In **Ashok Debbarma alias Achak Debbarma v. State of Tripura**⁸, this Court has made following observations in para 20 which are reproduced below: -

⁶ (2012) 9 SCC 284

⁷ (2013) 14 SCC 266

H ⁸ (2014) 4 SCC 747

“..... The primary object of the test identification parade is to enable the witnesses to identify the persons involved in the commission of offence(s) if the offenders are not personally known to the witnesses. The whole object behind the test identification parade is really to find whether or not the suspect is the real offender. In *Kanta Prasad v. Delhi Admn.*⁹, this Court stated that the failure to hold the test identification parade does not make the evidence of identification at the trial inadmissible.”

14. In view of the above principle of law laid down by this Court, we are unable to accept the submission of learned amicus curiae that not holding of test identification parade in the present case is fatal for the prosecution.

15. For the reasons, as discussed above, we do not find any force in this appeal which is liable to be dismissed. Accordingly the appeal is dismissed.

Nidhi Jain

Appeal dismissed.

⁹ AIR 1958 SC 350