

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.376 of 2012

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(Against the Judgment of conviction dated 28.02.2012 and Order of sentence dated 01.03.2012 passed in Sessions Trial No.495/A/1999 by the 2nd Additional Sessions Judge, Bagaha, West Champaran).

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Basudev Yadav @ Tiwary, son of Late Saryug Yadav, resident of Pakahareta, P.S. Thakaraha (Bhitaha), District - West Champaran.

.... Appellant.

Versus

The State of Bihar

.... Respondent.

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Appearance :

For the Appellant : M/s. Ravi Shankar Sahay & Vijay Kumar Singh No.1, Advocates.

For the State : Mr. Abhimanyu Sharma, A.P.P.

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CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA PRAKASH)

Date: 29-09-2015

The Appellant has been convicted for the offence under Section 364(A) of the Indian Penal Code and sentenced to Rigorous Imprisonment for life and fine of Rs.10,000/-, in default of which, further Rigorous Imprisonment for one year vide Judgment of conviction dated 28.02.2012 and Order of sentence dated 01.03.2012 passed by the 2nd Additional Sessions Judge, Bagaha, West Champaran, in Sessions Trial No.495/A/1999.

2. The case of the Informant Shanti Devi (not examined) is that in the night of 21.08.1995 some unknown persons entered her

house and forcibly kidnapped her husband. The occurrence is said to have been witnessed even by her cousin Nathuni Paswan (P.W.3).

3. In the present split up trial, only the Appellant faced the trial.

4. During trial, the prosecution examined altogether four witnesses.

5. P.W.1, Vindhychal Paswan, who was the victim, stated that on the date of occurrence the accused persons including the Appellant, Harilal Yadav, Gulteni Yadav, Jira Yadav and Mahatam Yadav kidnapped him and kept him confined for 11-12 days. He was released after the payment of Rs.65000/- as ransom.

6. P.W.2, Bikau Paswan, stated that in the night of occurrence, he saw the Appellant alongwith 10-12 unknown accused persons abducting P.W.1, who was released after 10-12 days. In cross examination, he stated that he had seen Basudeo Yadav earlier about 20 years back.

7. P.W.3 Nathuni Paswan, who is named in the First Information Report being the cousin of the Informant, has stated that in the night of occurrence, he witnessed the Appellant and unknown persons abducting his brother-in-law, who was, later on, released. In cross examination, he stated that he had not taken the name of Basudeo Yadav earlier but had disclosed his name to his neighbours

including P.W.2. He further stated that he knew Basudeo Yadav and his name from before.

8. P.W.4, Banarsi Chaudhary, is a formal witness, who proved the First Information Report (Ext.2).

9. It has been submitted on behalf of the Appellant that the victim Vindhyachal Paswan had deposed in the earlier trial also as P.W.1 but in the said trial, he did not divulge the name of any accused persons including the name of Hira Lal Yadav, who was one of his kidnappers and, for that reason, in the said trial, he was acquitted. In such circumstances, the evidence of Vindhyachal Paswan (P.W.1) is not fit to be relied upon. As far as the evidence of P.W.2, Bikau Paswan and P.W.3, Nathuni Paswan, is concerned, their evidence is also fit to be discarded for the simple reason that had they identified Appellant Basudeo Yadav, there was no reason as to why his name was not mentioned in the First Information Report, which was instituted on the next day at 05.00 P.M i.e. 19 hours later. Evidently, the evidence of P.W.2 and P.W.3 is not trustworthy in such circumstances.

10. On going through the records of the case, learned A.P.P. for the State is not in a position to dispute the fact that the victim P.W.1, Vindhyachal Paswan, was examined as P.W.1 in the connected trial and his evidence has also been exhibited and that he

had not taken the name of any of the miscreants.

11. In the circumstances, discussed above, we find that the prosecution has miserably failed in proving its case beyond all reasonable doubts.

12. In the result, this appeal is allowed. The impugned Judgment of conviction and Order of sentence passed against the Appellant is set aside. Appellant, who is in jail custody, is directed to be released forthwith, if not wanted in any other case.

(Anjana Prakash, J)

(Rajendra Kumar Mishra, J)

**Pradeep Srivastava/
N.A.F.R.**

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