

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.17 of 2002

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1. Subas Giri,
 2. Ram Nath Giri, both sons of late Madhav Giri, Residents of Village-Kachnar,
PS. Siswan, Distt-Siwan,

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Raghav Prasad, Advocate

For the Respondent/s : Mr. Sujit Kumar Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
CAV JUDGMENT

Date: 14-08-2015

Instant appeal has been filed by the appellants/convicts, Subash Giri and Ram Nath Giri against the judgment of conviction and sentence dated 03.01.2002 passed by Presiding Officer, 1st Additional Sessions Judge-FTC, Siwan in Sessions Trial No. 245/88/112/2001 holding both the appellants guilty for an offence punishable under Sections 307 IPC and directed each of them to undergo RI for three years as well as fined appertaining to Rs. 1000/- in default thereof, to undergo RI for six months, additionally.

2. Phoolmati Devi wife of Sheoji Giri filed a written report on 14.02.1984 alleging inter alia that her husband Sheoji Giri was a priest and was doing worship at Aasan Temple for the last 4-5 years. He happens to be missing from the aforesaid temple since 15 days. The aforesaid information was conveyed by one Jogendra Singh who came at her home in search of her husband Sheoji Giri whereupon she disclosed that her husband has not come to her. Then Jogendra Singh disclosed that Om Prakash Giri of village-Nagai along



with one unknown person took away Sheoji Giri and since thereafter, Sheoji Giri did not return. They have taken away on the pretext of Baraichha of his sister's son. On this information, she also began to search her husband hither and thither and during course thereof, she had informed her father. As her father did not come, she proceeded to her Naiher along with her children. In the way near Ghur Ghat orchard, she met with Subas Giri and Ram Nath Giri, her co-villagers who inquired her regarding destination. She disclosed the event whereupon they both disclosed that they have kept him (Sheoji) at the place of their maternal uncle. Accordingly, she accompanied both of them. When they reached at Gyaspur Ghat, they crossed the river on boat. So many persons were there. After crossing the river, they all got down from the boat. The other travellers proceeded towards their destination while she stayed and during course thereof, Subas Giri and Ram Nath Giri snatched her son aged about 1 ½ years and threw him into the water. She raised alarm, over which, people present in the surrounding rushed. Ram Nath Giri succeeded in his escape while Subas Giri was caught hold who was also assaulted. After taking out her son from water, she was directed to return back and accordingly, she came back to her village on a rickshaw arranged by them. She had further disclosed that Jogendra Singh had informed regarding missing of her husband about four days ago.

3. On the basis of the aforesaid written report, Siswan PS Case no. 8/84 was registered under Sections 364, 307 of the IPC

whereunder charge-sheet was also submitted and after cognizance, the case was committed to the court of sessions where trial commenced and culminated in acquittal of co-accused, Om Prakash Bharti as well as acquittal of these two appellants under Section 364 IPC, however, have been convicted and sentenced for an offence punishable under Sections 307 IPC, hence this appeal.

4. The defence case, as is evident from mode of cross-examination as well as from the statement recorded under Section 313 Cr.P.C., is of complete denial as well as of false implication at the instigation of their enemies who were none else than accused of a murder case launched by the appellants with regard to murder of their father whereunder they were convicted and sentenced out of whom, one Ambika was still behind bar. To support the same, the judgment of the aforesaid murder case has been exhibited apart from other documents along with examination of one DW.

5. In order to substantiate its case the prosecution had examined altogether 11 PWs out of whom, PW-1 Jagdish Singn, PW-2, Sharda Devi, PW-3, Ram Bhajji Choudhary, PW-4, Phoomati Devi, PW-5, Dhanpat Singh, PW-6, Hari Kishun Bharti, PW-7, Yogendra Singh, PW-8, Laxmi Paswan, PW-9, Chandrika Singh, PW-10, Awadhesh Kumar Sinha, PW-11, Subhash Singh and also had exhibited Ext-1, FIR.

6. The defence had also examined one DW, namely,

Vijay Kumar Singh and had exhibited Ext-A, Certified copy of Gift, Ext-B, Certified copy of FIR of Siswan PS Case No. 24/86, Ext-C, certified copy of judgment of Sessions Trial No. 7/75/25/80.

7. Because of the fact that case of kidnapping of husband of PW-4, informant, Phoolmati Devi has not been found proved against these two appellants including one Om Prakash Bharti, on account thereof, they were acquitted therefor. With regard to conviction and sentence recorded for an offence punishable under Section 307 IPC, the prosecution has advanced the story that while informant PW-4 along with her children were going to her Naiher as father did not come to her place even having been informed, met with these two appellants in the midst of way who disclosed keeping of her husband at her maternal uncle's place. That being so, the informant joined with these two appellants and during course thereof, after crossing the river by boat met with the unfortunate incident whereunder as has been alleged, her son has been thrown into the river.

8. On this score, three witnesses are relevant, PW-2, Sharda Devi who happens to be daughter of informant, Ram Bhajji @ Ram Bhajji Chaudhary. PW-4, Phoolmati Devi, informant herself, PW-3, Ram Bhajji @ Ram Bhajji Chaudhary. Before coming to their evidence, first of all, evidence of PW-8, Laxmi Paswan, Investigating Officer has to be looked into for proper appreciation of their evidence. In his examination-in-chief at para-4, he had stated that after



recording statement of Phoolmati and Sharda, he proceeded to the place of occurrence which lies at Kalwara Diyara. The place of occurrence happens to be situated in a lonely place lying other side of Saryu River, 150 yard south to Uttar Pradesh Border. From his evidence, it is apparent that he had not mentioned the fact whether there was water in the river, depth of the water, presence of boat along with sailor and further whether road was there for to & fro, this side or that side having presence of travellers, passengers, passersby because of the fact that when the evidence of PW-2 and PW-4 is taken together, it is apparent that they had crossed the river through boat occupied by so many passengers and coming to other side, while others had gone, she remained and during course of stay, both the accused caught hold of her son and threw him into the water. That means to say, from the objective finding of the Investigating Officer regarding place of occurrence, the assertion of the prosecution did not find support. Again from the evidence of PW-4, it is evident that she was provided rickshaw at the Ghat, as is evident from the written report itself, as well as from para-7 of her examination-in-chief which would suggest that people were frequently passing through but the Investigating Officer negatived the same.

9. Another aspect happens to be unnatural conduct of the prosecution. Informant had disclosed that she had informed her father regarding missing of her husband but her father did not come, on account thereof, she intended to come to her *maika*. It is difficult to

believe that a father-in-law, after coming to know regarding disappearance of son-in-law will sit idle without approaching his daughter and further, will not come forward to support the case of the prosecution, at least, on the score that he was informed by his daughter regarding mishappening.

10. PW-3 is the witness who claimed to have lifted the victim, a kid aged about 1 ½ years from the water. He had stated that the two persons had caught hold of a woman out of whom one managed to escape while other was apprehended by the local inhabitants who disclosed his identity as Subas Giri. He lifted the boy from the river. During course of cross-examination, it is evident from para-2 that none was present there. He alone was there and rescued the boy. Then thereafter, he had gone to his village. Again, he gave a peculiar picturisation of the occurrence. When he alone was present there then how the local inhabitants arrived, apprehended Subas Giri while Ram Nath Giri escaped and during midst thereof, he rescued the boy. At least, in the aforesaid background, when it was a Ghat having facility of boat, presence of rickshaw must visualize presence of other also. At the present moment, evidence of PW-4 as well as PW-2 has to be taken whereunder they had stated that the persons having been assembled there got themselves crossed to other side, got them over rickshaw to her Sasural. Subas was under their custody. However, Subas's presence was not at all secured or procured during course thereof. His evidence has become doubtful on two score. The first

one, I/O had found the P.O. at lonely place, rules out having presence of crops nearby Ghat, hence presence of PW-3 at his field during course of occurrence become unreliable. In likewise manner, he had stated that he was known to PW-4 since before, speaks a lot.

11. So far other witnesses are concerned, PWs-1, 5, 6 are not at all going to improve the fate of the prosecution on the ground that they are not eyewitness to the occurrence, as alleged by the informant, having been committed at Gyaspur Ghat. PW-7, 9, 10 and 11 are hostile witnesses having disowned the prosecution version.

12. Giving a thoughtful consideration to the fact and circumstances of the case, it is apparent that prosecution could not be able to substantiate its case beyond reasonable doubt. Consequent thereupon, the judgment impugned is set aside. The appeal is allowed.

13. Since the appellants are on bail, they are discharged from the liability of bail bond.

(Aditya Kumar Trivedi, J)

Patna High Court
August 14th 2015
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