

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.89 of 2009

Arising Out of PS.Case No. -30 Year- 2000 Thana –Beldaur, District- KHAGARIA

Gulo Sahni, son of Late Lakshami Sahani, resident of village- Dumri, P.S.-Beldaur,
District- Khagaria.

.... Appellant

Versus

The State of Bihar

.... Respondent

With

Criminal Appeal (DB) No. 207 of 2007

Arising Out of PS.Case No. -30 Year- 2000 Thana –Beldaur, District- KHAGARIA

1. Bhikho @ Bhikhari Sahni, son of Late Sitaram Sahni.
 2. Nunumani Sahni, son of Bhikho @ Bhikhari Sahni.
 3. Chandrika Sahni, son of Bhikho @ Bhikhari Sahni.
- All are residents of village- Thalha, P.S.-Beldaur, District- Khagaria.

.... Appellants

Versus

The State of Bihar

.... Respondent

Appearance :

(In CR. APP (DB) No. 89 of 2009)

For the Appellant/s : Mr. Jitendra Narayan Sinha, Advocate
Mrs. Kumari Vandana, Advocate

For the Respondent/s : Mr. Abhimanu Sharma, A.P.P.

(In CR. APP (DB) No. 207 of 2007)

For the Appellant/s : Mr. Ajay Kumar Sinha, Amicus Curiae

For the Respondent/s : Mr. S.N.Prasad, A.P.P.

CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH
and

HONOURABLE MR. JUSTICE AMARESH KUMAR LAL
ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH)

Date: 11-05-2015

Cr. Appeal (DB) No.89/2009 has been filed against the
judgment of conviction dated 4.12.2008 passed by learned Additional
Sessions Judge, F.T.C.V, Khagaria in Sessions Trial No.225A/2001



whereby the sole appellant Gulo Sahni has been convicted under Sections 364/34 and 302/34 of the Indian Penal Code and sentenced to suffer imprisonment for life under each count vide order dated 16.12.2008 and for the offence under Sections 364/34, the appellant has been fined a sum of Rs.25,000/- also, and in default, to undergo simple imprisonment of six months. However, both the sentences were directed to run concurrently.

2. Cr. Appeal (DB) No.207/2007 comprising of three appellants has been filed against the judgment of conviction dated 20.12.2006 passed by learned Additional Sessions Judge, F.T.C.II, Khagaria in Sessions Trial No.225 of 2001 whereby all the appellants have been convicted under Sections 364A and 302 of the Indian Penal Code and sentenced them to undergo imprisonment for life under each count by order dated 21.12.2006. Both the sentences against were directed to run concurrently.

3. Both the appeals arise out of Beldaur P.S. Case No.30/2000 dated 4.07.2000 initially registered for the offence punishable under Sections 364A/34 of the Indian Penal Code and later on, Section 302/201 of the Indian Penal Code was added on 7.07.2000 on recovery of dead body. Thus, the appeals have been heard together and are being disposed of by this common judgment.

4. The prosecution case, in short, as made out in the

written report dated 4.07.2000 of Umakant Singh (P.W.5) of village Nayagaon made to Officer-in-charge of Beldaur police station is as follows :

The informant stated that his brother Shivakant Singh left *Nayagaon* on 2.07.2000 and stayed at the house of Manohar Sharma in *Dadroja*. Thereafter, at about 10.00 A.M. on 3.07.2000, he left for his *Basa* situated at *Hathiyakol* to supervise his maize crops. In the night of 3-4.07.2000 at about 1.30 A.M., he was abducted by accused Gulo Sahni, Bhikhari Sahni, Nunumani Sahni and Chandrika Sahni, all residents of village-Thanha, P.S.-Beldaur with aid of six unknown miscreants. The accused persons had abducted his brother Shivakant Singh for ransom. As no whereabouts of his brother could be traced, the informant made to his written report to the police.

5. On the basis of written report, Beldaur P.S. Case No.30/2000 dated 4.07.2000 was initially registered under Sections 364A/34 of the Indian Penal Code. After registration of the case, P.W.7 Shivrindan Prasad started investigation of the case and succeeded in recovering the dead body of Shivakant Singh from Laurang Ghat, which is very close to Hathiyakol. On recovery of the dead body, the inquest report (Ext.3) was prepared on which P.W.3 Ganga Prasad Yadav and P.W.4 Bido Yadav had signed as witnesses. The dead body was sent for post mortem examination also. The police



after investigation of the case submitted charge sheet under Sections 364A, 302 and 201 of the Indian Penal Code against the appellants including accused Chamak Lal Sahni and Raj Kumar Sahni. The cognizance of offence was taken accordingly. The case was committed to the court of sessions for trial giving rise to Sessions Trial No.225/2001. It appears that the accused Gulo Sahni absconded and his case was separated and numbered as Sessions Trial No.225A/2001. Charges were framed under Sections 364A and 302 of the Indian Penal Code against the appellants and accused Raj Kumar Sahni and Chamaklal Sahni, to which, they pleaded not guilty and claimed to be tried.

6. The prosecution in support of its case examined nine witnesses. The defence of the accused in the statement under Section 313 Cr.P.C. was complete denial of the occurrence and that they had been implicated in this case as the informant were insisting for payment of their *Bataidari* amount.

7. The trial court on consideration of materials on record convicted the appellants under Sections 364A and 302/34 of the Indian Penal Code and sentenced them, as noticed in detail in paragraph 1 of the judgment and the accused Raj Kumar Sahni and Chamaklal Sahni were acquitted being given benefit of doubt. Being aggrieved, two separate appeals have been filed.



8. The prosecution in order to bring home the charge has examined nine witnesses. Out of them, P.W.1 Shambhu Singh, P.W.2 Krishnanand Singh and P.W.8 Bulu Singh are on the point of commission of offence. P.W.5 Umakant Singh, the informant is not an eye witness of the occurrence, rather his written report to the police was based upon the informations of the incident provided by P.W.2 Krishnanand Singh and one Ajay Singh (not examined). P.W.3 Ganga Prasad Yadav and P.W.4 Bido Yadav are witness to the inquest. However, they have not claimed to have identified the dead body to be that of the deceased Shivakant Singh. P.W.7 Shivnandan Prasad is the investigating officer of the case, whereas, P.W.9 Dr. Purushutum Kumar Sinha had conducted the post mortem examination on the cadaver on 7.07.2000. The post mortem examination report has been marked as Ext.4.

9. We would first examine the evidence of doctor P.W.9 who conducted the post mortem examination on the dead body of the deceased. It would appear from the post mortem examination report (Ext.4) that the deceased sustained three incised injuries. Two incised injuries i.e. all on neck and abdomen were ante mortem. The deceased also sustained incised injuries on both his legs which were post mortem. According to the doctor, the deceased died on account of injury nos.1 and 2 which were sufficient in ordinary course of nature

to cause death of a person. According to the doctor, the time elapsed since death was 3-4 days. The decomposition of the body had started.

10. We find that the post mortem examination report makes it amply clear that the death is homicidal and it was neither natural nor accidental. The evidence of doctor and the post mortem examination report thus confirms beyond doubt that the deceased was done to death. The issue is whether it was the accused persons who had kidnapped/abducted the deceased for ransom and subsequently killed him.

11. The case of the defence is that the evidence of P.Ws. 1, 2 and 8 should not be believed as they had identified the accused persons in the night and in the flash of the torch light ranging from 1-10 seconds. They next submit that the police station was only 15 Km. from the place of occurrence. Nonetheless, the FIR was lodged after a delay of 15-16 hours. The primal argument of the defence is that though the FIR was registered on 4.07.2000 and the same was received in the court after delay of three days on 7.07.2000, for which, no explanation has been offered by the prosecution. They next submit that the prosecution has utterly failed to establish either the case under Section 364A of the Indian Penal Code or Sections 302/34 of the Indian Penal Code.

12. On the other hand, counsel for the State submits that

the accused had been identified by as many as three witnesses namely, P.Ws. 1, 2 and 8. He submits that both the witnesses and the accused were local persons and as such, the identification cannot be difficult. He next submits that there was hardly any delay in lodging the FIR taking into account that the police station was 15 Km. from the place of occurrence.

13. We have heard the counsel for the parties, we find that the prosecution has examined P.Ws. 1, 2 and 8 on the point of commission of the offence. P.W.1 stated that the occurrence took place at about 1.30 A.M. in the night of 3-4th July, 2000. P.Ws. 1 and 8 claimed to have identified four of 8-10 accused persons in the flash of torch light. P.W.2 has claimed to have identified the four appellants by his voice. We agree with the submissions of the learned counsel for the State that it may not be difficult for a local person to identify co-villagers even in the night in flash of the torch light. We find that though there was some delay in lodging the FIR, but the delay in lodging the FIR was not alarming. But, one thing is noticeable that the FIR was received in the court after a delay of three days, for which, no explanation was offered by the prosecution. It is true that the defence has also not put any question to the prosecution in order to enable it to offer explanation for the delay. Nonetheless, no explanation has been forthcoming from the prosecution side for the delay. This Court in the



case of *Badri Mian and Anr. Vs. The State of Bihar reported in 1988 BBCJ 181* observed that unexplainable delay in despatching the FIR to the court may adversely affect the prosecution case. We further find that the prosecution has not been able to produce an iota of the evidence in support of its case that the victim was kidnapped/abducted for ransom. There is no whisper to the aforesaid effect from any of the prosecution witnesses. In absence of any evidence much less any cogent evidence, the charges and conviction under Section 364A IPC would have no leg to stand. Besides this, we find that the informant in the FIR has not disclosed the name of the person from whom he learnt about kidnapping of his brother. As per the FIR, he received the aforesaid information at 6.30 A.M. about the kidnapping of his brother in the morning. He makes the written report at 5.30 PM in the police station, still he does not disclose the name of the person from whom he learnt about the incident of kidnapping of his brother. Furthermore, all the witnesses namely, P.Ws. 1, 2 and 8 claimed to have seen the accused persons abducting Shivakant Singh, but none of them made any endeavour to rescue him. Furthermore, no *Hulla* was made by the witnesses, which conduct seems unbecoming of witnesses who are own relatives of the deceased.

14. In view of foregoing discussions, we are of the considered view that the prosecution has not able to bring home the

charge even under Sections 302/34 of the IPC or 201/34 IPC.

15. In the result, both these appeals are allowed. The judgment of conviction and order of sentence are set aside. The appellants are acquitted of the charge they had been found guilty of. The appellants, namely, Bhikho @ Bhikhari Sahni, Nunumani Sahni and Chandrika Sahni are on bail. They shall stand discharged from the liability of their bond. The appellant Gulo Sahni, who is in custody, shall be released forthwith, if not wanted in any other case.

16. Mr. Ajay Kumar Sinha, learned Amicus Curiae has assisted us in Cr. Appeal (DB) No.207/2007 and in token of recognition of his assistance, we direct one fee of hearing to be paid to him by the Patna High Court Legal Services Committee. For the above purpose, let the first and last pages of this judgment be made over to him.

(Samarendra Pratap Singh, J)

(Amaresh Kumar Lal, J)

V.K. Pandey/-

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