

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.1155 of 2012

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1. Nabaliki Singh S/o Late Jagroshan Singh R/o Village - Ekouni, P.S.
Charpokhari, District - Bhojpur

2. Ram Awadhesh Singh S/o Late Jagroshan Singh R/o Village - Ekouni, P.S.
Charpokhari, District - Bhojpur

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

---with---

Criminal Appeal (DB) No. 53 of 2013

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Bhikari Singh Son of Late Parshotam Singh Resident of Village Ekoni, P.S.-
Charpokhari, District- Bhojpur

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Anant Kumar Pandey
Mr. Ashok Kumar Singh

For the Respondent/s : Mr. A.Kumar Sinha, A.P.P.
Mr. D.K. Sinha, 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: 28-06-2016

Heard learned counsel for the Appellants and learned
counsel for the Additional Public Prosecutor.

2. All the above named Appellants have been
convicted under sections 364/34, 302/34 and 201/34 of the I.P.C. and
sentenced to undergo imprisonment for life and fine of Rs. 5000/-
each for the offence under section 364 and 302 I.P.C. as also 3 years
Rigorous Imprisonment each for the offence under section 201

I.P.C., in default of payment of fine, one year Rigorous Imprisonment passed by the 1st Additional Sessions Judge, Bhojpur at Ara vide Judgment dated 10/15.10.2012 in connection with Sessions Trial No. 177 of 2010/68 of 2010 arising out of Charpokhari P.S. Case No. 174 of 2008.

3. The case of the prosecution, according to Hira Lal Singh, (P.W. 3) is that on 25.11.2008 his son, Prince Kumar aged about 9 years had gone to School but did not return. Thereafter, they started looking for the child. They learnt that during Tiffin time, the boy had gone to get his mobile from Ramchandra Singh to whom he had given it for charging. On 26.11.2008, the Informant, Hira Lal Singh (P.W. 3) instituted a *Sanha* at the Police Station. On 28.11.2008 at about 7:10 am, he learnt that a dead body was thrown in a drain in front of the School. When it was fished out, it was identified as that of his son. There were several marks of injuries in his face. He instituted the present case against unknown persons.

4. During trial, the prosecution altogether examined 8 witnesses.

5. P.W. 1 Laxmina Devi, the mother of the deceased, corroborated the fact that her son had gone missing on 25.11.2008 and several attempts were made to search him out. In course of it, they had gone to the house of Ramchandra Singh, who had said that



the child had not come for taking his mobile. When they were returning, they met some persons including the Appellants, who used to reside in that area. When she told them not to joke about the child, the Appellant Nawaliki Singh, Krishna and Kamlesh said she should arrange for some money and only then the child would be found. Then she returned and her father-in-law went to the Police Station to lodge a *Sanha*. On 27.11.2008 once again she went to the house of the present Appellants, Nabaliki Singh, Kamlesh and Krishna Singh asked them to return the child at which Appellant Bhikhari and Kamlesh said that since they had got written the *Sanha* at Police Station, the child would not return.

In cross-examination, she stated that she was examined after 20 days of the occurrence. Her attention was drawn to the earlier statement and that she had not stated them that she had asked the Appellants to return the child even if they were joking as also that some of the accused persons had stated that she should arrange for some money and that once the *Sanha* was instituted, the child would not return. She further stated that all the accused persons belonged to the same family and lived barely 20 meters from her house. She stated that on 27.11.2008, she had gone to the accused persons with prayer to return the child. It was suggested to her that in fact, her son used to suffer from Epilepsy, which she denied.

6. P.W. 2 Mithilesh Kumar Singh had also stated the fact that the child had gone missing after he had gone to school. He confirmed the fact that *Sanha* was instituted in this regard by the Grand-father on which he had also signed. Later on, 28.11.2008, the dead body was found near the school on the west upon which the Police had arrived.

7. P.W. 3 Hira Lal Singh is the Informant and father of the deceased, who stated that the child Prince Kumar, aged about 9 years had gone to school, thereafter, he went missing. His father stated that when Prince Kumar was going to get his mobile from Ramchandra Singh the present Appellants and some other accused persons were also seen going behind him. He confirmed that several attempts were made to search out the child, but to no avail. He also confirmed that he had seen the present Appellants and others on the way sitting around the fire and then Appellants Ram Awadhesh and Bhikhari asked as to where he had gone and replied when he replied he had gone to the house of Ramchandar to look for his child, Nabaliki Singh, Kamlesh Singh and Krishna Singh said that he should arrange for some money for return of his child. On 26.11.2008, his father went to give a *Sanha* about the missing child. On 27.11.2008, when he, his wife as also his father were searching the child, the Appellants Ram Awadhesh Singh, Bhikari Singh and



Kamlesh Singh allegedly stated that they should arrange for some money but since they had instituted a *Sanha*, they would not get the child back. On 28.11.2008 at about 6:00 am., he suddenly heard that a dead body was thrown near the canal at which he went and identified the dead body to be of his son. It had injury marks on its body. The Police then came and prepared the Inquest Report and performed the last rites. He suspected the accused persons including the Appellants of having kidnapped and killed his child. He proves his *fardbeyan* as Exhibit and signatures of the witnesses on the same marked as Exhibits- 1, 1/1, 1/2 and 1/3. He also proved the protest petition dated 02.02.2009 as Exhibits- 2 and 2/1.

There is nothing of note in his cross-examination.

8. P.W. 4 Deepak Kumar Amba is a formal witness was proved the *Sanha* Diary Entry No. 341 dated 26.11.2008.

9. P.W. 5 Surya Nath Singh is a signatory to the Inquest Report which he proves as Exhibit-3.

10. P.W. 6 Baldev Singh, grandfather of the victim also supports the fact that his grandson deceased Prince Kumar had gone missing after he had gone to School and despite several searches, he could not be found. He corroborated the fact that the Appellants met his family on the way and remarked that they should arrange for money for returning of the child. He confirmed the fact that on



26.11.2008, he instituted a *Sanha*, which he proves as Exhibit-4 and the signature of the witnesses on the same as Exhibits-4/1, 4/2 and 4/3. He further stated that some of the accused persons including the Appellants had also stated that since now the *Sanha* had been instituted, the child would not return. He proves his signature on the Inquest Report as Exhibit-3/1. He confirmed that he had not expressed any suspicion upon anyone in the *Sanha* nor he had mentioned about the fact of the accused suggesting that money should be arranged for the return of the child. He stated that it was on 29.11.2008, he suspected the accused involved in the crime in the manner in which they were moving after the dead body was found.

11. P.W. 7 Dr. Uday Kumar Singh conducted the Postmortem on the deceased on 28.11.2008 and proved the Postmortem Examination Report as Exhibit-5. He was of the opinion that the death was on account of asphyxia and the dead body was not decomposed.

12. P.W. 8 Lal Bihari Paswan, the Investigating Officer, who had confirmed that a *Sanha* was given by grandfather of the deceased on 26.11.2008 at 1:00 pm. He had proved the signature as Exhibit-4/4 and Station Diary Entry in his hand as Exhibit-6. He further stated that the dead body was recovered on 28.11.2008 at 6:00 am, thereafter he went to the village and prepared the Inquest



Report which is Exhibit-3/2. He also recorded the *fardbeyan*, on which he identified his signature and endorsement on the *fardbeyan* as Exhibits-1/4 and 1/5 respectively. He also proved the First Information Report as Exhibit-7. He further stated that he inspected the place of occurrence, which was in the middle of the village and the dead body was recovered from the fields. He confirmed that he had not mentioned that the Police dog had gone at the door of the Appellants. Neither P.W. 1 Laxmina Devi nor P.W. 3 Hira Lal Singh stated about the dialogue between the accused persons and the Informant. He stated that on 23.12.2008, while the Appellants Ram Awadhesh Singh was arrested while working in the fields.

13. The Defence had examined Dharm Devi Yadav on the point that that Appellants were not in the village on the date of occurrence.

14. On going through the evidence of the witnesses, we find that evidently there is no eye-witness to the actual kidnapping or murder. The only circumstance is that the Appellants were heard passing some unsavoury remarks. However, we find that the deceased boy had gone missing from 25.11.2008 and search was conducted in its regard continuously by his family members. It was, thereafter, a *Sanha* was instituted on 26.11.2008 and the present First Information Report was lodged two days later on 28.11.2008. In the

three days even though P.W. 1, P.W. 3 and P.W. 6 stated that the Appellants had passed certain remarks on account of which, they suspected their complicity, yet the same was not mentioned in any of the complaints. It was much later that the Appellants appear to have been implicated merely on the basis of suspicion.

15. In such circumstances, when there is no reliable material in support of the prosecution case which is based merely on suspicion and deduction, the above Appeals are allowed. The Judgment of conviction and Order of sentence dated 10/15.10.2012 passed against the Appellants, above named, by the 1st Additional Sessions Judge, Bhojpur at Ara in Sessions Trial No. 177 of 2010/68 of 2010 arising out of Charpokhari P.S. Case No. 174 of 2008 is set aside. They are acquitted of the charges. The above named Appellants are in jai custody, therefore, they are directed to be released forthwith, if not wanted in any other case.

(Anjana Prakash, J)

(Rajendra Kumar Mishra, J)

Shailendra/Manish-

AFR/NAFR	NAFR
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