

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.84 of 2015

Arising Out of PS.Case No. -21 Year- 1991 Thana -THAKRAHA District-
WESTCHAMPARAN(BETTIAH)

- =====
1. Ramesh Yadav Son of Sukhal Yadav resident of Village Malahi Tola, P.S. Thakaraaha (Bhitaha), District - West Champaran.
 2. Indrasan Yadav Son of Amar Yadav
 3. Badari Yadav Son of Jangaldeo Yadav
 4. Ramnath Yadav Son of Bundeli Yadav All resident of Village - Bhudharwa, P.S. Thakaraaha (Bhitaha), District - West Champaran.

.... Appellant/s

Versus

1. The State of Bihar.

.... Respondent/s

with

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Criminal Appeal (SJ) No. 168 of 2015

Arising Out of PS.Case No. -21 Year- 1991 Thana -THAKRAHA District-
WESTCHAMPARAN(BETTIAH)

- =====
1. Satya Narain Yadav S/o Late Bhoj Yadav resident of village - Ledihanawt, P.S. Jhakaraha, District - West Champaran.
 2. Hanesh Yadav S/o Bhagwat Yadav resident of village - Lediharrawa, P.S. Jhakaraha, District - West Champaran

.... Appellant/s

Versus

1. The State of Bihar.

.... Respondent/s

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Appearance :

(In CR. APP (SJ) No.84 of 2015)

For the Appellant/s : Mr. Bimlesh Kumar Pandey, Advocate

For the Respondent/s : Mr. Sujeet Kumar Singh, A.P.P.

(In CR. APP (SJ) No.168 of 2015)

For the Appellant/s : Mr. Suraj Narain Sinha, Sr. Advocate
Mr. Prithvi Nath Mishra, Advocate

For the Respondent/s : Mr. Bipin Kumar, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 27-03-2017

In Criminal Appeal No. 84 of 2015 wherein Ramesh



Yadav, Indrasan Yadav, Badari Yadav and Ramnath Yadav are appellants while in Criminal Appeal No. 168 of 2015 wherein Satya Narain Yadav and Hanesh Yadav are the appellants, commonly originate against the judgment of conviction dated 30.01.2015 and order of sentence dated 02.02.2015 passed by Fast Track Court No. 1, Bagaha, West Champaran identifying each of them guilty for an offence punishable under Section 364 of the Indian Penal Code (wrongly mentioned in the judgment as 366 I.P.C. however corrected subsequently), directing each of the appellant to undergo R.I. for 10 years as well as to pay fine of Rs. 10,000/-, in default thereof, to undergo S.I. of one year additionally, on account thereof have been heard together and are being disposed of by a common judgment.

2. Mohammad Rahman Ansari (not examined on account of his death) gave his fardbeyan on 04.07.1991 disclosing therein that his son Maulvi Ansari had proceeded from his house to Ledihaarwa on 29.06.1991 for cultivation saying that on the following morning he will return. When he failed to return, the Police was informed. Subsequently thereof, he had gone in search of his son and during course thereof on 04.07.1991, his son Noor Alam (P.W.4) had disclosed that on account of previous animosity, Satya Narain Yadav borrowed Dudhnath group for kidnapping of his brother who lifted him with an ulterior motive. He also disclosed Usman, Harun, Hakim



and others to be eyewitnesses to the occurrence.

3. On the basis of the aforesaid fardbeyan, Thakraha P.S. Case No. 21 of 1991 was registered under Section 364 of the Indian Penal Code whereupon investigation commenced and proceeded and after concluding the same, charge-sheet was filed under Section 364 of the Indian Penal Code wherein cognizance was also taken. Consequent thereupon, the offence being triable by the Court of Session, after commitment thereof, the trial proceeded and culminated in a manner, subject matter of instant appeal.

Defence as pleaded by way of suggesting to the witnesses as well as during course of statement under Section 313 of the Code of criminal Procedure, is of complete denial. Furthermore, false implication has also been pleaded in the background of admitted case of animosity prevailing amongst the parties.

4. In order to substantiate its case, prosecution had examined altogether 5 P.Ws. out of whom P.W. 1 is Harun Miyan, P.W. 2 is Ekram Ansari, P.W. 3 is Hakim Ansari, P.W. 4 is Noor Alam, P.W. 5 is Sakil Ansari. Prosecution had also exhibited written report as Exhibit-1. As stated above, nothing has been adduced on behalf of the defence.

5. Admittedly, there happens to be long delay in launching of the prosecution as the date of occurrence has been



shown to be on 29.06.1991 while the fardbeyan was recorded on 04.07.1991. From perusal of the fardbeyan, it is evident that soon after disappearance of the victim Maulvi Ansari, the Police Station was informed however, during course of cross-examination of the witnesses, the aforesaid factual aspect has not been tested in specific term. Moreover, on account of non-examination of the informant due to his death as well as due to non-examination of the Investigating Officer for which there happens to be no explanation at the end of the prosecution, and further having failure on the part of the prosecution to bring the aforesaid Sanha on record and is accordingly found abhorred.

6. Furthermore, it is evident from the fardbeyan that P.W. 2, another son of informant, who claimed to be an eye witness has put no place in the fardbeyan nor any kind of discloser has been made on that score while another son Noor Alam P.W. 4 who met with the informant on 04.07.1991 itself and on whose information, the fardbeyan was recorded wherein there happens to be identification of only one Satya Narain Yadav with an allegation that he borrowed Dudhnath group to kidnap Maulvi Ansari in the background of long animosity as well as on account of refusal to withdraw a case. In the aforesaid background, now the evidences have to be seen whether they testified commission of the occurrence



at the end of the appellants.

7. Before coming to the other witnesses, it looks prudent to see the evidence of P.W.2, one of the sons of informant and brother of the alleged victim at first instance. He had deposed during his examination-in-chief that at the relevant time he was weeding in a field lying at Lediharwa Reta, at that very time, 10-11 persons armed with gun, lathi came near Maulvi Miyan where paddy seedling, were being planted. They caught hold Maulvi Miyan. Satya Narain Yadav caught hold and then tied his hand and began to assault. Further, they dragged the victim and during midst thereof, Satya Narain Yadav was saying that as he has declined to withdraw the case, he would be murdered. Thereafter, his kith and kin would be murdered. He claimed identification of Satya Narain, Ramesh, Badari, Indrasan, Swaminath. He claimed identification of others also. During cross-examination, he had admitted in paragraph 5 that he had stated before the Police that he came to know from the persons who were present in and surrounding at Lediharwa with regard to the fact of kidnapping of his brother by Satya Narain as well as Dudhnath group. In paragraph 7, he had stated that he had not informed the Police on the alleged date of occurrence but Rahman Miyan, his father, had informed on the same date. Further, he is unable to say on which date First Information Report was registered. He had further stated that his



father had collected information much before given by him. His father was informed by Hakim Miyan, who happens to be his cousin brother, then he stated that his father had lodged First Information Report in presence of Hakim Miyan as well as he himself.

8. P.W. 4 is another son of informant Rahman Ansari (informant). He had deposed that on the alleged date and time of occurrence his brother Maulvi Ansari was engaged in agricultural work at Lediharwa Reta. When he did not return even till evening hour, on account thereof, his father had gone to Bhitha O.P. and informed the O.P. On the following day when he went to Lediharwa Reta for collecting information, Harun, Usman and other unknown persons informed that while Maulvi Ansari was engaged in planting paddy seedling 10-12 persons came who caught hold Maulvi Ansari and took him away. Further, they have also disclosed complicity of Satya Narain Yadav, Ramesh Yadav, Duhnath, Swamynath, Haresh and Gauri. It has also been disclosed that Maulvi Ansari had instituted a case against Satya Narain and others and in the aforesaid background, he was kidnapped. They were also threatening since before that in case of non-withdrawal of the case, he will be murdered. During cross-examination at paragraph 7, he had stated that he came to know about the occurrence at about 8.00 A.M. At that very time he was at his Darwaja. Then thereafter, he gave



information to his father whereupon he along with his father came to Police Station and informed. Furthermore, from paragraph 9, it is evident that there happens to be some sort of wrong identification in dock.

9. P.W. 1 is the Hasan Miyan who had stated that on the alleged date and time of occurrence while he was weeding, there was uproar whereupon he stood up and saw Satya Narain Yadav, Ramesh Yadav, Dudhanath Yadav, Swamynath Yadav, Ramnath and others who caught hold Maulvi Ansari, taking towards bank of Gandak river. Maulvi Ansari did not return. He further identified the accused. During cross-examination, he had shown his status as cousin brother of alleged victim as per paragraph 5. In paragraph 7, he had stated that at the time of alleged occurrence, paddy seedling was being planted in the field. In paragraph 8 he had stated that he was not knowing accused persons since before the occurrence. In paragraph 10, he had stated that he had not gone to Police Station. He met with Rahman Miyan in the evening and then had disclosed with regard to the occurrence. Then thereafter, Rahman and his son Noor Alam and Ekram had gone to Police Station for institution of the case. In paragraph 11, he had stated that after registration of the case Police came to the village and took statement.

10. P.W. 3 is Hakim Ansari who had stated that on the



alleged date and time of occurrence while he was implanting paddy seedling, he saw Satya Narain, Ramesh , Dudhnath , Naresh, Haresh , Ramnath, Swamynath, Kanchan having Maulvi in their captive and taking him away. Others were also present. They took him towards bank of Gandak. They were saying that either to withdraw the case or he will be murdered. Maulvi did not return. He claimed identification of the accused. During cross-examination at paragraph 3 he had stated that kidnapping was from his field but he is unable to disclose Kheshra number as well as Khata number. In para 4 had named Sakim and Usman to be present there. In para 6 he had stated that he had not informed police but informed brother and father of Maulvi. In para 9 he had stated that 4-5 labourers were engaged but he is unable to disclose their identity. In para 11 he had admitted his relationship with informant.

11. P.W. 5 is Sakim Ansari. He had stated that the alleged date and time of occurrence where he was engaged in implanting paddy seedling , he saw Dudhnath and Satya Narain along with 8-10 persons, who caught hold Maulvi. At that very time Maulvi was engaged in planting Dudhanath was armed with Rifle, Satya Narain - gun and rest lathi. Dudhnath tied hand of Maulvi while Satya Narain had said that he should be murdered. At that very time, Satya Narain was insisting upon to withdraw a case but Maulvi was not inclined to



withdraw the same. They were also threatening to murder kith and kin of the Maulvi. He claimed identification of the accused. During cross-examination at paragraph 3, he had stated that his house lies at Bharpatiya. P.O. also lies at Bharpatiya. At paragraph 6, he had stated that at the time of occurrence, 8-10 labourers were engaged by the Maulvi Miyan and further identified them as Noor Alam, Ekram Ansari and Mustaque. With regard to others, he failed to disclose the name. in para 9 he had deposed that 40-50 persons have seen the occurrence, but he is unable to disclose their name.

12. As stated above, the informant could not be examined on account of his death. From the evidence of the witnesses as stated above, it is evident that P.W.3 has stated that in the evening of alleged date of occurrence he had informed the informant while P.W. 4 has negated the same. That has got a bearing in the background of the fact that had there been proper information on the alleged date of occurrence itself then there would have been prompt reporting of the occurrence at the Police Station, ruling out any sort of objection with regard to false implication. Apart from this, when the evidence of P.W.2 , one of the sons of informant is considered then, in that event, he during his examination-in-chief claimed to be an eye witness of the occurrence. That being so, his natural conduct would have, even scared himself to save his life, either to inform the



Police or to inform his parent regarding the mishappening wherein Maulvi Ansari was kidnapped by Satya Narain Yadav, an enemy since before.

13. Furthermore, from the evidence of the witnesses, it is apparent that place of occurrence has not been consistently proved in the background of the fact that P.W. 5 has stated that P.O. lies at village Bharpatiya , a place different from Lediharwa Reta, while P.W. 2 has stated that paddy seedling were being planted in own field by Maulvi Miyan but according to P.W. 3 , it was his field and according to P.W. 1 he failed to disclose the proper place of occurrence. With regard to P.W. 4, as stated above, he has not claimed himself to be the eye witness of occurrence. That being so, the inconsistency amongst the P.Ws. relating to P.O. , is indicative at the fact that none of there happens to be an eye witness to the occurrence. Moreover, due to non-examination of I.O., the interest of appellants are found prejudiced, as, had there been examination, proper care have been ascertained nullifying status of the respective P.Ws.

14. Now coming to another aspect , it is apparent from the evidence of P.W. 1 that in the evening of the date of occurrence itself he met with Rahman Miyan, the informant as well as his son Noor Alam, P.W. 4 whom he disclosed the occurrence and on such



information, they both gone to Police station for registration of the case, on the basis of which, Police came and recorded his statement. Had there been such kind of activity at the end of the prosecution, then in that event, the present scenario would not have visualized as in the present case, there happens to be delay of more than four days without any explanation and further, the aforesaid event completely makes the testimony of the P.W. 1 credible. P.W. 2 virtually appears to be cipher. In likewise manner P.W. 3, P.W. 4 and P.W. 5 happen to be. Had there been examination of the Investigating Officer, then in that event, the appellants would have an opportunity to cross examine with regard to delay more particularly in the background of the disclosure having been made on behalf of prosecution that too, over recording of Sanha a day after the alleged occurrence and further, on that very score, the genuineness of the prosecution version would have been tested as the witnesses have spoken that they have disclosed with regard to the occurrence to the informant as well as Noor Alam in the evening on the date of occurrence itself. Further, as pointed out hereinabove, there happens to be inconsistency in the evidence of the witnesses over proper identification of the place of occurrence. Had there been examination of the Investigating Officer, the aforesaid deficiency which remained unexplained at the end of the prosecution. Furthermore, though P.W.1, P.W.2 and P.W. 3, P.W.



5 have claimed themselves to be an eye witness to occurrence, but from their cross-examination there such status is found completely sacked apart from their abnormal activity which also cast doubt over their authenticity. In sum and substance, the nature of the evidence having adduced on behalf of the prosecution did not justify the finding recorded by the learned trial court. Consequent thereupon, the same is set aside.

15. Both the appeals are allowed. Appellants are in custody. They are directed to be released forthwith if not wanted in any other case.

(Aditya Kumar Trivedi, J)

Vats/-

AFR/NAFR	NAFR
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