

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.275 of 2001

Arising Out of PS.Case No. -null Year- null Thana -null District- SAMASTIPUR

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1. **Ram Dayal Yadav @ Nangidaria** , son of late Ram Sudhari Yadav
 2. **Tarni Yadav**, son of Banarsi Yadav, both resident of village-Sabhaipura, P.S. Hasanpur, District-Samastipur.

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Arun Kumar Tripathi-Amicus Curiae
For the Respondent/s : Mr. Sujit Kumar Singh-A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

Date: 10-01-2017

Appellants Ram Dayal Yadav @ Nangidaria and Tarni Yadav have been found guilty for an offence punishable under Section 364/ 34 of the I.P.C. and each one has been sentenced to undergo rigorous imprisonment for eight years with a further direction of set off in consonance with the period having undergone during course of trial in terms of Section 428 of the Cr.P.C. vide judgment of conviction and sentence dated 13.08.2001 passed by the Assistant Sessions Judge, Rosra, Samastipur in Sessions Trial No.233 of 2000/ 37 of 2000.

2. PW-6, Ramanand Yadav gave his fard-bayan on 31.07.1997 at about 10.00 p.m. alleging inter alia that on the same day at about 7.30 p.m., he along with his son Hari Nath Yadav were going to his house from his *Darwaza*, during midst of way, Ram Dayal



Yadav, Tarni Yadav, Ram Prakash Yadav, Mithilesh Yadav, Makeshwar Yadav along with 3-4 unknown persons armed variously appeared, caught hold his son Hari Nath Yadav and dragged him south to the house. He along with his family members including his other sons, Baijnath Yadav, Vishwanath Yadav raised alarm, but the accused persons did not pay heed to it nor left his son. They took away him. The motive for occurrence has been shown as he succeeded in purchase of a land from Ashok Sharma. Accused Ram Prakash Yadav was also one of contenders, and as he became frustrated on that very score as a consequence thereof, this occurrence has been committed.

3. On the basis of the aforesaid fard-bayan, Hasanpur P. S. Case No.118 of 1997 was registered under Section 147, 148, 149, 364 of the I.P.C. as well as Section 27 of the Arms Act, whereupon investigation was taken up and after concluding the same, chargesheet was submitted against these two appellants as they were apprehended during course of investigation keeping investigation pending against remaining accused whereupon, after taking cognizance of an offence, the case was committed to the Court of Sessions where trial commenced and concluded ultimately meeting with the result adverse to the appellants, subject of instant appeal.

4. The defence as is evident from mode of cross-



examination as well as statement recorded under Section 313 Cr.P.C. is of complete denial of the occurrence as well as of false implication on account of animosity prevailing amongst the parties since before, who are own *Pattidar* and to substantiate the same, one D.W. has also been examined.

5. Learned Amicus Curiae Sri Arun Kumar Tripathi vehemently challenged finding recorded by the learned Trial Court and to substantiate the same, it has been submitted that from the evidence of the witnesses, it is apparent that all the material witnesses happen to be own family members. Independent witnesses, whoever came up, became hostile as they have not supported the prosecution case. In the background of admitted case of the parties that both the parties are on litigating term since before, their evidences should not be accepted in routine manner. Consequent thereupon, close scrutiny is warranted and during such exercise, it is apparent that none have substantiated the prosecution case to the extent, which could justify the finding recorded by the learned Trial Court.

6. Furthermore, it has also been submitted that there happens to be embellishment in the evidence of the witnesses which, for want of examination of the I.O. could not be brought up on record, whereupon the interest of the appellants have been prejudiced. Side by side, it has also been submitted that due to non-examination of the



I.O., the manner of recovery of PW-5, the alleged victim, Hari Nath Yadav became doubtful and so, the ultimate beneficiary would be the appellants which, the learned Trial Court failed to appreciate. So, in sum and substance, it has been submitted that prosecution case is not at all found duly substantiated from the evidence available on the record, whereupon instant appeal is fit to be allowed nullifying the finding recorded by the learned Trial Court.

7. Learned Additional Public Prosecutor while supporting the finding recorded by the learned Trial Court has submitted that though there happens to be some sort of infirmity persisting in the judgment impugned, but those could be considered as irregularity and not illegality adversely affecting upon the finding recorded by the learned Trial Court. Furthermore, it has been submitted that though evidence of each and every witnesses has not been independently discussed, but the finding as concluded by the Trial Court is found properly based upon appreciation of the evidence along with admission having at the end of the DW-1. Consequent thereupon, the judgment impugned should be affirmed.

8. In order to substantiate its case, prosecution had examined altogether eleven (11) PWs, out of whom, PW-1 Bishwanath Yadav, PW-2 Baijnath Prasad Yadav, PW-3 Ram Babu Srivastava, PW-4 Suresh Yadav, PW-5 Hari Nath Yadav, PW-6 Rama



Nand Yadav, PW-7 Ram Balak Yadav, PW-8 Ashok Sharma, PW-9 Thokri Yadav, PW-10 Ram Khelawan Yadav and PW-11 Dasrath Prasad Thakur. Side by side, also exhibited the documents as Exhibit-1, formal F.I.R. and Exhibit-2, Fard-bayan. Defence had also examined one witness Ram Nandan Yadav as DW-1. However, no exhibit has been marked on their behalf. With regard to categorization of the witnesses, PW-3 and PW-4 are formal in nature, PW-7, PW-8, PW-9 and PW-10 have not supported the case of the prosecution and on account thereof, have been declared hostile by the prosecution. PW-11 is the part Investigating Officer, who took charge on 02.09.1998 and submitted chargesheet after apprehending these two appellants. So, the material witnesses now remains PW-1, PW-2, PW-5 and PW-6, out of whom, PW-5 is the victim, PW-6 is the informant, PW-1 and PW-2 are brothers of PW-5. So, all the witnesses happen to be father and sons.

9. After going through the evidences, on account of examination of DW as well as having some sort of admission at his end, this case has got a peculiarity. It is needless to say that whenever accused enters into defence and examines witness, then in that event, the accused has to face ultimate consequence of the admission having been made by the defence witness and so, the admission with regard to kidnapping of son of Rama Nand Yadav (PW-6), having been



admitted by DW-1 has got a bearing. However, it would be considered subsequently to the extent of aforesaid admission as well as its repercussion over the fate of instant appeal.

10. Before going to appreciate the evidence of other witnesses, it looks pertinent to deal with evidence of alleged victim, Hari Nath Yadav, who has been examined as PW-5. In his examination-in-chief, he had deposed that on the alleged date and time of occurrence, he was proceeding towards his house for meal. When he reached near *Darwaza* of Jagdish Yadav, all of a sudden, Mithilesh Yadav, Makeswar Yadav, Ram Dayal Yadav, Ram Prakash Yadav and Tarni Yadav came and apprehended him. He raised alarm attracting his father and three brothers, who came, but the accused persons did not release. Thereafter, Mithilesh Yadav and Makeswar Yadav pointed pistol towards him and with the aid of other co-accused, took him away south to the village. They kept him in a sugarcane field for one day and one night, then thereafter, shifted his place to brick-kiln where he remained for two days and then, on last day, confined him in a boring house. At that very place, Mithilesh Yadav had said that they will succeed in getting Rs.25,000/- and in an alternative, he will be murdered. It has further been stated that when all the accused persons fell asleep, he escaped there from and reached at village-Paradah where he disclosed regarding the occurrence to the



villagers. One of them took him to Chaukidar where he stayed whole night. On following day, Chaukidar took him to Hasanpur Police Station where police had recorded his statement. He stayed at Police Station one day and one night, then thereafter, he along with his father was taken to Rosra Police Station where his statement was recorded, then he was taken to the Superintendent of Police, Samastipur where again his statement was recorded. Then thereafter, police took him to Hasanpur Police Station and then, released him. He further stated that his statement under Section 164 Cr.P.C. was recorded at an earlier count. During cross-examination at Para-4, he had stated that at the time of occurrence, his father along with three brothers were present. Occurrence took place 10 lagga away from his *Darwaza*, it was dark night. His father and remaining three brothers have seen the occurrence. They had raised alarm, but he is unable to say how many villagers have arrived. He had further stated that his father and brothers chased, but hearing sound of firing, they became apprehensive. He had further stated that he was conscious during whole occurrence. He had further stated that he is unable to say in which field he was confined. He had further stated that accused persons tied his eyes. In likewise manner, he had stated with regard to his stay at brick-kiln as well as boring house. In Para-5, he had also stated that he had shown those places to the police.



11. PW-6 is the informant, who had stated that on the alleged date and time of occurrence, he along with Baijnath Yadav, Bishwanath Yadav, Hari Nath Yadav were present at his *Darwaza* where lantern was burning. Hari Nath Yadav proceeded towards his house, during midst thereof, Ram Prakash Yadav, Mithilesh Yadav, Makeshwar Yadav, Tarni Yadav, Ram Dayal Yadav along with 3-4 persons armed variously came and caught hold his son, Hari Nath Yadav and dragged him towards south. Seeing the same, he along with other family members rushed, raised alarm even then accused persons succeeded in kidnapping his son. Then, he disclosed the motive and then, he had disclosed after occurrence. he had gone to Police Station, gave his fard-bayan. During cross-examination on the factum of occurrence, at Para-4 had said that at the time of occurrence, no firing was made. He had further stated that none of the villagers, save and except, his family members had seen the occurrence. In Para-5, he had stated that after four days, he met with his son at Police Station, Chaukidar had come to inform him.

12. PW-1 is Bishwanath Yadav, brother of victim, PW-5 as well as son of PW-6, the informant. He had stated that on the alleged date and time of occurrence, he along with his father and brother Hari Nath Yadav and Baijnath Yadav were present at his *Darwaza*. Ram Dayal Yadav, Tarni Yadav, Ram Prakash Yadav,



Mithilesh Yadav, Makeshwar Yadav armed with pistol came there, caught hold his brother Hari Nath Yadav and on the point of pistol dragged him south to his village. They followed, they raised alarm over which, accused persons began to fire. Then, he had disclosed the motive. During cross-examination on the point of occurrence at Para-6, he had stated that four days after the occurrence, Officer-in-charge had informed regarding tracing out of victim whereupon they gone and met with victim. His brother had not disclosed where he was confined during the intermediary period. In Para-7, he had stated that he had seen the accused persons for the first time in the Court after the occurrence.

13. PW-2 is another brother, who had stated that on the alleged date and time of occurrence, he was at his *Darwaza* along with his father and brothers, Hari Nath Yadav, Bishwanath Yadav and Ramadhar Yadav. At that very time, lantern was burning at his *Darwaza*. He along with his father was carrying torch. At that very time, his brother Hari Nath Yadav proceeded towards his house. As soon as he reached near the *Baithka* of Jagdish Sharma, Ram Dayal Yadav, Tarni Yadav, Ram Prakash Yadav, Mithilesh Yadav and Makeshwar Yadav armed with pistol came, caught hold his brother and dragged him towards south to village. They raised alarm over which accused persons fired and on account thereof, they became



apprehensive. He further stated that they have identified the accused persons in torch light. Then he disclosed the motive. During cross-examination at Para-9, he had stated that occurrence took place in between *Darwaza* and *Aangan*. It was dark night. They had raised alarm at the time of occurrence, but none came. He is not remembering whether his other family members had come or not. In Para-10, he had stated that they had chased about 10 lagga. In Para-13, he had stated that he had seen the accused in dock for the first time after the occurrence. Again, he had stated that he used to see Ram Prakash, Mithilesh and Maheshwar in village 15 days after the occurrence. In Para-14, he had further stated that he talked with Hari Nath, but he had not said anything with regard to his confinement during aforesaid interval.

14. Now, coming to inter se relationship, PW-1 in Para-3, PW-2 in Para-3 and 4, PW-5 in Para-2, PW-6 in Para-3, it is evident that prosecution as well as Mithilesh and Ram Prakash are own *Pattidar* having common house. Furthermore, it has been admitted by PW-2 in Para-6, PW-6 in Para-3 that a Partition Suit a proceeding under Section 144 and 107 Cr.P.C. was pending amongst the parties. It is further evident that one of the brothers namely Ramadhar Yadav have not been examined. It is further evident that as per evidence of PW-6, no firing was made at the end of the accused



persons while from the evidence of PWs-1 and 2, it is evident that during course of chase, the accused persons fired on account of which, they became apprehensive and withdrawn themselves from chasing the accused persons. Furthermore, from the evidence of PW-1, PW-2 and PW-6, it is apparent that though they have talked with Hari Nath Yadav, PW-5, it is apparent that they have not disclosed that Hari Nath Yadav had said anything with regard to place where he was kept captive.

15. Apart from this, from the evidence of PW-5, it is apparent that he had claimed to have shown the place where he was confined by the accused persons, but due to non-examination of the I.O., those things have not been exposed. In likewise manner, though PW-5 had stated that he was taken by *Chaukidar* to Hasanpur Thana. But Chaukidar could not be examined by the prosecution. PW-5 had further stated that he met with villagers of *Pairidah*, but none of them has been named. On account of aforesaid lapses, it has become doubtful whether victim PW-5 was actually kidnapped. Had there been such kind of occurrence, it would have been natural conduct of the PW-5 to divulge at least to his brothers as well as father, how he was taken as well as confined at Sugarcane field, brick kiln, boring house and in likewise manner, how he succeeded in his escape therefrom.



16. So, in the background of the infirmities as well as improbabilities persisting in the prosecution case, the genuineness of the prosecution version with regard to commission of kidnapping for the purpose of murder became doubtful and on that very score, admission of DW-1 is not going to improve the case of the prosecution much less relating to the appellants arraying them responsible for commission of the occurrence. Consequent thereupon, the finding so recorded by the learned Trial Court vitiates and is accordingly set aside. Appeal is allowed. Appellants are on bail hence, they are discharged from their liabilities. First and last page of the judgment should be given to the learned Amicus Curiae for the needful.

(Aditya Kumar Trivedi, J)

Vikash/-

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