

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.162 of 1994

1. Lakhan Bhagat, son of Jagdish Bhagat
2. Santan Bhagat, son of Ram Kishun Bhagat
Both residents of Village- Bhadeja, P.S.- Mufassil in the district of Gaya

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with
Criminal Appeal (DB) No. 206 of 1994

Shambhu Bhagat, son of Akalu Bhagat, resident of Village- Gadiya, Police
Station- Mufassil, District- Gaya

... .. Appellant/s

Versus

State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Prasoon Sinha, Amicus Curiae
For the Respondent/s : Mr. S.B. Verma, A.P.P.

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 14-11-2017

In both these appeals filed under Section 374 Cr.P.C. the appellants call in question tenability of a judgment dated 24th of March, 1994 passed by the 2nd Additional Sessions Judge, Gaya in Sessions Trial No. 154 of 1993/ 35 of 1993 by which the appellants have been convicted for offence under Sections 364, 302/34 and 201 I.P.C. and sentenced to undergo five years R.I. for offence under Section 364 I.P.C., Life



Imprisonment for offence under Section 302/34 I.P.C. and three years R.I. for offence under Section 201 I.P.C.

It is the case of the prosecution that P.W. 8 Dinesh Bhagat, the informant herein, on 27.06.1992 made a complaint that on 27.06.1992 the three accused persons Shambhu Bhagat, Lakhan Bhagat and Santan Bhagat came to meet him on the way in front of the house of Abdul Rajjak. Shambhu Bhagat asked him as to why he did not allow the sheeps to sit in the field of Santan Bhagat and he also enquired why he had abused Jai Ram Bhagat. Some talks took place and it is said that the accused became angry, abused him, threatened him to kill and fired at him from a country made pistol but it did not hit him. Thereafter when Santan Bhagat started loading the pistol, the appellant ran away and entered the house of Rajjak Mian and concealed himself on the roof. In the meanwhile, his uncle Jai Ram Bhagat, Janardan Bhagat and others came there, assembled, and the accused persons went away. Thereafter it is said that in the evening at 10:00 P.M. the accused persons again came to his house to assault his family members and started abusing his uncle Janardan Bhagat, bit him with a belt. The accused had entered his house with gun and pistol, searched for the informant and when they did not find him, they went away. It is



said that he remained in the house due to the fear and in the morning at 5:00 A.M. he was informed by Jai Ram Bhagat and Guddu Bhagat that the accused persons had kidnapped Chanarik Bhagat and they had taken him away saying that he will be killed. It is said that after some time they killed Chanarik Bhagat and went away towards the northern side.

To substantiate the contention, the prosecution examined nine witnesses of which P.W. 9 Jugal Paswan was a Homeguard Constable, is a formal witness, has proved Exhibit-7, the Sanha of the Police Station in question. P.W.2 Jai Ram Bhagat and P.W. 3 Deoki Bhagat have been declared hostile by the prosecution. The remaining witnesses are witnesses on the point of occurrence, P.W. 8 Dinesh Bhagat is the informant of the case and speaks about his father being killed on 28.06.1992 as narrated to him. He has stood by the story narrated by him. Dr. Kapil Deo Prasad was examined as P.W. 6 who had examined the deceased and submitted the Post Mortem Report. However, from the evidence that has come on record, the first part of the story and the second part of the story as narrated by the informant only pertains to the threatening and coming of the accused persons to the informant. However, there is no eye-witness to the taking away of Chanarik Bhagat and his killing.



There is no specific evidence available on record to show as to who took away Chanarik Bhagat and how he was killed. The only circumstances available are that something happened on two earlier occasions and the accused had said that they will kill the appellant and his family members. However, there are no specific evidence to relate the kidnapping of the deceased by the appellant and the evidence about his killing. The entire circumstances leading to the kidnapping and the killing have not been proved by the prosecution and the two witnesses P.W. 2 Jai Ram Bhagat and P.W. 3 Devki Bhagat who have informed the appellant about the taking away of Chanarik Bhagat and his killing to the informant have not supported the case of the prosecution. It is a case where the circumstances and the complete chain leading to the actual kidnapping and killing of Chanarik Bhagat are not proved.

That apart, we find that in the statement of the accused recorded under Section 313 Cr.P.C. the requirement of law as laid down in the case of **Sukhjit Singh Vs. State of Punjab- (2014) 10 SCC 270** and the judgments relied upon in the aforesaid case- **Tara Singh Vs. State-A.I.R. 1951 SC 441, Hate Singh Bhagat Singh Vs. State of Madhya Bharat- AIR 1953 SC 468, Ajay Singh Vs. State of Maharashtra- (2007)**



12 SCC 341 and Ranvir Yadav Vs. State of Bihar- (2009) 6 SCC 595 have not been fulfilled.

In the aforesaid cases it has been held by the Supreme Court that examination of an accused under Section 313 Cr.P.C. is not an empty formality. It is a statutory and mandatory requirement which has to be complied with in its letter and spirit. All the circumstances existing against the accused and all exonerating circumstances based on the evidence are required to be put to them and they granted an opportunity to explain the same. It is held by the Supreme Court in the aforesaid cases that non-compliance with the aforesaid statutory requirement vitiates the entire trial, it causes serious prejudice to the accused person and their conviction based on such a compliance of Section 313 Cr.P.C. is unsustainable.

Apart from the fact that in this case the circumstantial evidence appearing against the appellants are not sufficient enough, even there is non-compliance with the mandatory requirement of Section 313 Cr.P.C. as in the statement recorded of the appellants under Section 313 Cr.P.C. only two questions are put to them. The first one is that the witnesses as you have heard have testified about the events that took place on 27.06.1992 what have you to say. The second



question is you have heard the statement of the witnesses. Do you have anything to say. The circumstances appearing against the appellants and the exonerating factors have not been put to the appellants and they have not been granted any opportunity to explain the same.

That being the position as to how the conviction is ordered after total non-compliance with the provisions of Section 313 Cr.P.C., we are of the considered view that these appeals have to be allowed. Accordingly, taking note of all these circumstances, the appeals are allowed, the impugned judgment of conviction and sentence are set aside and the appellants are discharged from the liability of their respective bail bonds.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

P.K.P.

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	20.11.2017
Transmission Date	

