

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.12 of 2007

Arising Out of PS.Case No. -0 Year- null Thana -null District- SAHARSA

(Against the Judgment of conviction and order of sentence dated 27/29 November, 2006 respectively passed by the Additional District & Sessions Judge, Fast Track Court No. III, Saharsa, in Sessions Trial No. 208 of 2004 arising out of Sonebarsa P.S. Case No. 62 of 1991)

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1. Shiv Nandan Yadav, son of Kamleshwari Yadav, resident of village Maina, P.S. Sonbarsa, Distt. Saharsa.
 2. Surya Narain Yadav, son of Basudeo Yadav, resident of village Padampur, P.S. Sonbarsa, Distt. Saharsa.
 3. Bijo Yadav @ Bijendra Yadav, son of late Durgi Yadav, resident of village Maina, P.S. Sonbarsa, Distt. Saharsa.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Shiv Shankar Sharma, Advocate

For the State : Mr. Ram Priya Sharan Singh, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 23-11-2017

1. This Criminal Appeal has been filed against the Judgment of conviction and order of sentence dated 27/29.11.2006 passed by the learned Additional District & Sessions Judge, Fast Track Court No. 3, Saharsa in Sessions Trial No. 208 of 2004 arising out of Sonebarsa P.S. Case no. 62 of 1991 by which the appellant has been convicted under Section 363 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for five years with a fine of Rs.2,000/-.

2. The informant alleged that on 26.9.1991 at about



5:20 p.m. all the accused persons along with other unknown persons, having armed with weapons, came and kidnapped his Bhagina (sister's son), namely, Manoj Kumar Yadav for the purpose of marriage. However, his sister's son fled away from the confinement of the accused persons. It is alleged that the accused persons assaulted his Bhagina and snatched his wrist watch. On the basis of the aforesaid allegation, Sonbarsa P.S. Case No. 62 of 1991, dated 1.7.1991 under Sections 362, 323 and 379 of the Indian Penal Code has been registered against the accused persons. The police after investigation submitted charge sheet against the accused persons under Sections 364, 323 and 379/34 of the Indian Penal Code.

3. Heard learned counsel for the appellants and learned counsel for the Additional Public Prosecutor.

4. The counsel for the appellants has submitted that date of occurrence is 26.6.1991 and First Information Report has been lodged on 1.7.1991. Learned counsel for the appellants has further submitted that boy has returned just after few hours of the occurrence. He has also submitted that there are contradictions in the evidence of witnesses. The I.O. and Doctor have not been examined which has prejudiced the case of appellant.

5. The charge was initially framed by the court below for the offence under Section 364, 323 and 379 of the Indian Penal



Code. The court below has acquitted all the appellants of the aforesaid offences and has convicted them for the offence under Section 363 Indian Penal Code and sentenced them to undergo rigorous imprisonment for five years and make payment of fine of Rs.2,000/-

6. The learned A.P.P. has appeared and submitted that all witnesses have supported the case during trial. The court below has after proper appreciation of the evidence, passed the judgment of conviction and sentence.

7. In the instant case, total seven witnesses have been examined. Out of which, PW-1 (Kunj Tanti) has been declared hostile. PW-2 (Sikandar Yadav), PW-3 (Chandeshwari Yadav), PW5 (Shyam Yadav) and PW-6 (Binay Yadav) have been examined as eye witnesses. PW-7 (Manoj Kumar Yadav) is victim boy. The informant Shyam Yadav (PW-4) is not an eye witness.

8. The informant has given the First Information Report in the manner as he had seen the occurrence alleging therein that on 26.6.2011 at 5:30 p.m. all these three appellants along with other unknown had kidnapped his nephew Manoj Kumar Yadav with intention to marry him. The nephew of the informant any how managed to flee away from the clutches of the appellants. All the appellants were armed with three-nut. They have assaulted his nephew. Bijendra Yadav has snatched his wrist watch. The informant



has appeared in the court below as PW-4. In his examination-in-chief he has stated that he was not present at the time of occurrence. He learnt that his nephew Manoj Kumar Yadav had been kidnapped by appellant Nos. 1 and 2. The nephew of the informant came back sometime. Thereafter, he filed the case. He has proved the written report which bears his signature. The attention of this witness was drawn in cross-examination made in paragraph-4 wherein he has denied that on getting information about the occurrence, he has filed the case on the same day. He has admitted in paragraph-4 of the cross-examination that he has not seen the occurrence from his own eye. He learnt about the occurrence and, accordingly, he has filed the written report.

9. PW-2 and PW-3 have given their statement as eye witnesses stating that they saw the appellant Nos. 1 and 2 along with two unknown persons had kidnapped Manoj Kumar Yadav on Horse. PW-2 has stated in his cross-examination in paragraph-2 that he has given statement before the police on the date of occurrence in the village in morning, but as per written report, the occurrence has taken place on 26.6.1991 and written report was filed on 1.7.1991.

10. PW-5 (Shyam Yadav) has also deposed as eye witness stating therein that he was reading along with the victim Manoj Yadav at his Darwaza. In the meantime, 3-4 persons came on



Horse and kidnapped Manoj Yadav for the purpose of marriage. He has also deposed that appellant No. 1 assaulted with *lathi* on the head of Manoj Yadav and, thereafter, they took him on horse. Manoj Yadav returned after hulla. The attention of this witness was also drawn in paragraph-6 that he has not given such statement before the police. This witness has further stated in his cross-examination recorded in paragraph-6 that he has given statement before the police on the same date of occurrence at 2:00 a.m. in the night, but the First Information Report discloses that occurrence has taken place on 26.6.1991 and the case has been registered on 1.7.1991.

11. The victim boy Manoj Kumar Yadav has been examined as PW-7. In his examination in chief he has deposed that he was reading with PW-5 (Shyam Yadav) on the Darwaza of his Mama. In the meantime, appellant Nos. 1 and 2 arrived and assaulted Manoj with lathi and forced him to go on horse for the purpose of marriage. Appellant No. 1 forcibly kidnapped him. He however fled away from the clutches of the accused persons. The Mama came and took him to Sonebarsa Police Station where the case was registered. In his cross-examination recorded in paragraph-10, he has stated that he gave written report before the police on the basis of which, the case was registered.

12. From perusal of the First Information Report, it



appears that case has been registered by Mama of this witness. The attention of this witness has been drawn in paragraph-13 of the cross examination that he has given information before the police of his kidnapping by appellant No. 1 on false ground.

13. Binoy Yadav (PW-6) has stated in his cross-examination that his statement was recorded before the police after 3-4 days of the occurrence. He has denied suggestion that he is not an eye witness of the occurrence. He has further stated in his cross-examination that there was injury on the head of Manoj. The accused had taken away Manoj for the purpose of marriage.

14. The defence has examined two witnesses. Out of which, DW-1 is Anil Yadav and DW-2 is Kishore Yadav. The defence witnesses have deposed that no kidnapping of Manoj took place when his marriage was fixed.

15. In this manner, from the evidence of prosecution witnesses as mentioned in detail, it appears that PWs. 2, 3, 5, 6 and 7 have been examined as eye witnesses. The defence has drawn attention of these witnesses in the cross-examination, about them not giving such statement earlier before the police, which they have denied. The victim PW-7 and other witnesses have stated that on the date of alleged occurrence, Manoj Yadav sustained injury in his hands by the appellants but Doctor was not examined in the case.



16. In such circumstances of the case, this Court is of the view that non-examination of I.O. has greatly prejudiced the defence because there is specific defence of the accused that no such occurrence has taken place and witnesses have not given such statement earlier before police as given during examination-in-chief in the court. It further appears that there is apparent contradiction in the evidences of PWs 2, 3, 5, 6 and 7 who have been examined as eye witnesses.

17. The informant has deposed in the court below that he has not seen the occurrence but from the First Information Report, it appears that he has seen the occurrence, which creates serious doubt about the genuineness of the First Information Report itself filed by the informant. It further appears from the evidence of PW-7 (victim boy) made in paragraph-10, that he filed written report about the occurrence before the police and on that basis case was registered but admittedly, the First Information Report has been registered on the basis of written report filed by Mama of the victim boy Prawesh Yadav (PW-4) which also creates doubt about genuineness of the case of the prosecution.

18. Therefore, this Court is of the view that prosecution has not been able to substantiate charge for the offence under Sections 363 of the Indian Penal Code against the accused



persons beyond all reasonable doubts.

19. Accordingly, the judgment of conviction and order of sentence dated 27.11.2006 and 29.11.2006 respectively passed by the Additional District & Sessions Judge, Fast Track Court No. 3, Saharsa, in Sessions Trial No.208 of 2004 arising out of Sonebarsa P.S. Case No. 62 of 1991 against the appellants, is hereby set aside. All the appellants are acquitted of the charges levelled against them and are discharged from the liabilities of bail bonds.

20. This Criminal Appeal is accordingly allowed.

(Sanjay Priya, J)

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AFR/NAFR	AFR
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