

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.7 of 2014

Arising Out of PS.Case No. -2 Year- 1974 Thana -GOGRI District- KHAGARIA

=====

1. Ramroop Yadav Son Of Late Leela Yadav R/O Sapha, P.S.-Maheskhunt, Distt-Khagaria

.... Appellant/s

Versus

1. The State Of Bihar

.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Anil Kumar Choudhary, Adv.
Mr. Arun Kumar Tripathi (*Amicus Curiae*)

For the Respondent/s : Mr. Bipin Kumar (APP)

=====

CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 29-06-2017

This appeal has been preferred against the judgment dated 13.10.2013 and order of sentence dated 31.10.2013, passed by Abhay Kant Jha, learned Additional Sessions Judge, Khagaria, in Sessions Trial No. 136 of 1994, by which he has convicted the appellant under Section 364/34 Indian Penal Code and has sentenced him to undergo R.I. for five years with a fine of Rs. 2,000/- and in default of payment of fine R.I. for three months. It further appears that vide said judgment and order, he has acquitted the appellant from the charge under Section 302/201 Indian Penal Code.

Earlier in this case nobody has appeared on behalf of the appellant as such Mr. Arun Kumar Tripathi, learned counsel was



appointed as *Amicus Curiae* to assist the Court. However, during the course of argument, learned counsel for the appellant, Mr. Anil Kumar Choudhary appeared and informed this Court that the appellant has already been released after undergoing the period of sentence and as such he seeks permission to withdraw the present appeal.

In this case, prosecution case in short is that on 02.05.2017, appellant and other accused persons came and forcibly taken away the victim Janardan Singh, uncle of informant and, thereafter, when the informant enquired about the same, it has been informed that they have released the Janardan Singh but later on his pair of shoes was found concealed beneath “*Newari*” Netal Paswan, (co-accused of this case).

On the basis of the same, Gogri P.S. Case No. 02/1974 was registered against the appellant and other accused persons.

It further appears that as the present appellant was not appearing in the case, his case was separated from the case of other accused persons and the case and trial of other accused persons, initiated and after trial, they have been convicted vide Judgment dated 07.10.1993 passed in Sessions Case No. 300/87. It appears that later on this appellant appeared and as such his case was also committed to the court of sessions, which ultimately came to the file of Shri Abhay



Kant Jha, learned Additional Sessions Judge, Khagaria.

After completion of Trial, the appellant was convicted under Section 364/34 Indian Penal Code Indian Penal Code and sentenced as stated above and further he has been acquitted from the charge under Section 302/201 Indian Penal Code vide said judgment and order.

Being aggrieved by the aforesaid judgment and order, appellant has preferred the present appeal.

In the present case, altogether four witnesses have been examined and they are; P.W. 1 Fulendra Singh, P.W. 2 Nandlal Mandal, P.W. 3, Lalhu Tanti and P.W. 4, Shankar Singh @ Shivshankar Singh and apart from that following documents have been admitted into evidence.

Ext. 1 Signature of P.W. on inquest report

Ext. 2 Signature of informant on his fardbeyan

Ext. 3 Certified copy of F.I.R.

Ext. 4 Certified copy of chargesheet

Ext. 5 Judgment passes in Sessions Case No. 300/87

In this case, charges were framed against the appellant under Section 364 Indian Penal Code as well as under Section 302/34 Indian Penal Code.

In this case appellant himself has come on dock to appear



as a defence witness and as per defence story, it has been submitted that he has falsely been implicated in this case by the family members of the informant as he was earlier working with the father of the informant as some wages were due, which was not paid.

In the present case, out of the above witnesses, P.W. 1, has been declared hostile and so far P.W. 2 is concerned, he is not the eye-witness of the occurrence rather he appears to be only a hearsay witness.

P.W. 3 and 4 claim themselves to be the eye witness and P.W. 3 stated in his evidence that appellant and other accused persons have taken away the deceased- Janardan Singh, with themselves. His evidence in Cross-examination clearly shows that accused persons were not armed and his evidence in chief also shows that he saw deceased-Janardan Singh going with the appellant and other accused persons without any hesitation. It further appears from his evidence that accused persons including appellant had come together.

So far evidence of P.W. 4 (informant) is concerned, he has stated in his evidence that appellant and other accused persons had called the deceased-Janardan Singh and the deceased went there and, thereafter, appellant and other accused persons dragged him towards the village. On hulla, informant and other rushed there but



the accused persons threatened to kill them. Thereafter, the informant came to his father and then the informant and other persons went in search of the deceased and, thereafter, they were told by the accused persons that they have released the deceased and in course of search shoes of deceased was found and they went to the police station and after three days dead body of the deceased was found. Further this witness is admittedly the nephew of the deceased.

In the present case, appellant has been convicted under Section 364 Indian Penal Code and was sentenced to undergo R.I. for five years with a fine of Rs. 2,000/- and in default of payment of fine R.I. for three months.

Since the appellant has already undergone the period of sentence, as submitted by learned counsel for the appellant and he has submitted that this appeal has become infructuous.

Accordingly, this appeal is dismissed as become infructuous.

(Vinod Kumar Sinha, J)

sunil/-

U		T	
---	--	---	--

