

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.305 of 2003

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

- =====
1. Balbir Choudhary @ Biltha Choudhary
 2. Sunil Choudhary @ Sunil Kumar Choudhary, both sons of Sri. Raja Ram Choudhary, resident of village- Singhia Makandpur, P.S. Gopalpur, District- Bhagalpur.

.... Appellants

Versus

The State of Bihar

.... Respondent

with

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Criminal Appeal (SJ) No. 348 of 2003

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

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Rajiv Jha @ Rajiv Kumar Jha, son of Shri Sukhdeo Jha, resident of village – Naugachia, PS- Naugachia, District- Bhagalpur.

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

(In CR. APP (SJ) No.305 of 2003)

For the Appellant/s : Mr. Akhileshwar Prasad Singh, Sr. Advocate

For the Respondent/s : Mr. Bipin Kumar, APP

(In CR. APP (SJ) No.348 of 2003)

For the Appellant/s : Mr. Amrit Anunay (amicus curiae)

For the Respondent/s : Mr. Bipin Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 10-05-2018

Appellants Balbir Choudhary alias Baitha Choudhary and Sunil Choudhary alias Sunil Kumar Choudhary in Cr.Appeal(SJ) No. 305 of 2003 and appellant Rajiv Jha alias Rajiv Kumar Jha in Cr.Appeal (SJ) No. 348 of 2003 have been convicted under Section 364 of the Indian Penal Code and sentenced them to undergo rigorous



imprisonment for ten years vide judgment dated 9.5.2003 and order dated 15.5.2003 passed by Sri Manohar Prasad, the then 2nd Additional Sessions Judge, Naugachia, in Sessions Trial No. 494 of 2002.

2. Prosecution case as per fardbeyan of PW 8 Subash Choudhary recorded by ASI at Makandpur Police Out Post on 23.6.2000, in short, is that on 18.6.2000 while he along with his son Sanjiv Kumar Choudhary was sleeping on the first floor of his house, at about 5 A.M., accused appellant Balbir Choudhary alias Biltha came upstairs and called the victim Sanjiv Kumar Choudhary by saying that Gorelal Jha and Rinku Jha were calling him. Thereafter the son of the informant (victim) went out with Balbir Choudhary and did not come back till evening and informant enquired from accused Biltha about the whereabouts of his son and he told the informant that Sajjiv had gone to accused Sunil Choudhary at Purnea and informant did not make further search. Two days thereafter accused Sunil Choudhary telephoned to Buchkun Choudhary and enquired from him as to whether the victim Sajjiv Kumar Choudhary had reached home and this gave rise to suspicion in the mind of informant and his suspicion was further confirmed when accused Sunil Kumar Choudhary came from Purnea on 22.6.2000 and narrated to the informant that the victim had come to his house on 18.6.2000 with



Rajiv Jha and stated that at about 7 P.M. accused Rinku Jha came on a motorcycle and stated that Gorelal Jha was calling him at the residence of Manik Da and thereafter all the three left on a motorcycle and hence FIR was lodged by the informant.

3. On the basis of aforesaid fardbeyan, Gopalpur P.S. Case No.89 of 2000 was registered under Sections 364, 120B and 34 of the Indian Penal Code. Post investigation charge sheet has been submitted, cognizance of the offence has been taken and after commitment the case ultimately traveled to the file of the learned Trial Judge for trial and disposal.

4. During trial charge has been framed under Section 364 IPC against all the three appellants and in course of trial altogether 13 witnesses have been examined on behalf of prosecution, they are PW 1 Shashi Kant Choudhary, PW 2 Mohan Jha, PW 3 Amit Kumar Choudhary, PW 4 Pankaj Kumar alias Rinku, PW 5 Ashwani Kumar Choudhary alias Buchkun, PW 6 Navin Kumar Choudhary, PW 7 Mahendra Choudhary, PW 8 Subash Choudhary (informant), PW 9 Jogeshwar Lal Das (declared hostile), PW 10 Sakunlata Devi (declared hostile), PW 11 Surendra Lal Das (cousin of the informant and declared hostile), PW 12 Shro Pujan Singh (I.O.) and PW 13 Bijay Kumar Rai (formal witness, who has proved formal FIR).

5. On behalf of defence, neither ocular nor documentary



evidence has been adduced and their simple defence is as per statement under Section 313 Cr.P.C. and trend of cross examination is of innocence and false implication.

6. Learned trial court on conclusion of trial has convicted the appellants under Section 364 IPC and sentenced them as stated above.

7. As nobody appears on behalf of appellant in Cr.Appeal (SJ) No. 348 of 2003, Mr.Amrit Anunay, Advocate has been appointed as amicus curiae to assist this Court.

8. Learned Sr.Counsel and learned amicus curiae have assailed the impugned judgment of conviction on the ground that the case is based on circumstantial evidence and there is circumstance that victim was called by appellant Balbir Choudhary alias Biltha and thereafter he had gone to Purnea along with accused Sunil Choudhary and he met with accused Rinku Jha and Gorelal Jha and except that there is no other circumstantial evidence against the appellants and evidence of PWs is contradictory by evidence of I.O. as I.O. in paragraph-8 of his evidence has deposed that witness Mohan Jha (PW 2) has not stated before him that victim Sanjiv has not returned and PW 3 Amit Kumar Choudhary has not stated before him that Gorelal Jha and victim Sanjiv came with one unknown. Similarly PW 4 had not stated before him that on 22.6.2000 he came to the house and Navin Choudhary (PW 6) has not stated before him that Sunil came



after four days of the occurrence at Purnea and similarly PW 7 has not stated that what is the matter and aforesaid contradictions go into the root of the case that they have seen the victim along with appellants. Further submission is that though PW 4 claimed that he had seen them in a Maruti Car and at that time the victim had tried to call him but the vehicle proceeded. In paragraph-13 of his cross examination he has stated that from Maruti Car victim was called and evidence shows that he is neighbour of PW 8 (informant) and FIR has been lodged after five days of the occurrence but he has not informed about the same to the informant, rather has stated for the first time before police and on enquiry he has stated so in his evidence. Learned counsel further submits that though PW 3 has stated that he saw Gorelal Jha, Sunil Choudhary and one unknown person and later on Rinku Jha boarded on Maxi and Balbir came there later on and he has stated later on that he came to know that victim Sanjiv Choudhary has been abducted. However, those evidences appear to be contradictory to the evidence of other witnesses as they have stated that victim Sanjiv Choudhary was seen at Purnea and PW 3 has not stated so to the informant as there is nothing in the fardbeyan and considering the aforesaid contradictions and omissions in the evidence of witnesses except that victim was last seen there was no circumstances against the appellants, as such, the appellants are entitled to the benefit of



doubt and conviction of the appellants under Section 364 IPC is not sustainable in the eye of law.

9. Contrary to that, learned counsel for the State has submitted that the evidence clearly shows that victim was last seen with the appellant Balbir Choudhary and later on Sunil Choudhary and had gone with Rajiv Jha and no explanation was given by the appellants about whereabouts of the victim and as such they have rightly been convicted under Section 364 IPC.

10. Having heard both sides and on perusal of the evidence it appears that PW 8 is the informant in this case and he has stated that on 18.6.2000 while he was sleeping in roof top along with his son Sanjiv, appellant Balbir Choudhary came and told Sanjiv that he was called by Gorelal Jha and Rinku Jha and informant has suspicion at that time and on enquiry he was told that Sunil Bhaiya had called him and thereafter there is no whereabouts about Sanjiv and his evidence further shows that Sunil Choudhary informed him that he had gone along with Gorelal, Rinku Jha and Rajiv Jha. Evidence of PWs. 1, 2, 5, 6 & 7 also supports the evidence of PW 8 and evidence of PW 3 shows that while he was taking stroll at about 6 A.M. on 18.6.2000 he arrived at Makandpur Chowk and saw one Tata Maxi arrived at the chowk boarded by accused Gorelal Jha, Sanjiv Choudhary and one unknown and later on appellant Balbir also arrived there and they



proceeded. If this evidence is to be believed the same is contrary to the prosecution story. As prosecution case is that it is Balbir who has taken Sanjiv Choudhary. Further, according to PW 3 he had seen them on 18.6.2000 but he had not narrated the same to the informant and even though FIR has been lodged after five days and no such story has been given in FIR. Similarly, evidence of PW 4 shows that he had seen one Maruti Van coming from the market in which the victim Sanjiv was there and when he arrived near the vehicle accused Gorelal commanded the driver to proceed and the Maruti had proceeded and he saw Gorelal, Sanjiv and one unknown person in the car and also saw Rajiv Jha driving the Maruti Van. However, his evidence further shows in cross examination that accused persons pressed mouth of Sanjiv Choudhary and Sanjiv could not convey any message to him and he was forbidden by Gorelal to speak. His evidence also shows that Sanjiv did not insist for stopping the vehicle. However, the conduct of PW 4 that he had not state the informant and there is no much story in FIR, creates doubt about the prosecution evidence.

11. Considering the evidence as discussed above, it appears that at best the evidence is that the victim was last seen with the appellants and except that there is no other circumstances available against the appellants. It has also come in the evidence that the victim was involved earlier in connection with a case of kidnapping of a girl



and evidence also shows that he was taken to the house of one Manik Da but neither Manik Da was examined nor any investigation was made with respect to Manik Da and no investigation was made regarding previous case victim was charge sheeted.

12. Considering the entire evidence on record, the appellants are at least entitled for the benefit of doubt in the present case.

13. Accordingly, both the appeals are allowed. The impugned judgment and order are set aside. As the appellants in both the appeals are on bail, they are directed to be discharged from the liabilities of their bail bonds.

14. For the service rendered by Mr. Amrit Anunay, Advocate as amicus curiae he is entitled for the admissible amount from the Legal Services Committee.

(Vinod Kumar Sinha, J)

spa/-

AFR/NAFR	NAFR
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