

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.378 of 2003

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

Arbind Kumar, son of Bidyanand Singh, resident of village Sripalpur, P.S. Punpun,
District Patna

.... Appellant

Versus

The State of Bihar

.... Respondent

with

Criminal Appeal (SJ) No. 379 of 2003

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

Binod Ram, son of Late Nakul Ram, resident of village & P.O. Shiripalpur, P.S.
Punpun, District Patna

.... Appellant

Versus

The State of Bihar

.... Respondent

with

Criminal Appeal (SJ) No. 406 of 2003

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

- 1. Yogendra Ram, son of Late Suresh Ram
- 2. Naresh Manjhi, son of Late Jamun Manjhi
- 3. Mithilesh Ram, son of Late Makhan Ram
- 4. Ramesh Ram, son of Late Bhim Ram
- 5. Surendra Ram, son of Late Bhim Ram, all residents of village Sripalpur, P.S.
Punpun, District Patna

.... Appellants

Versus

The State of Bihar

.... Respondent

Appearance :

(In all the appeals)

For the Appellant/s : Mr. B. K. Mishra, Advocate

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

(In CR. APP (SJ) No.378 of 2003)

For the Respondent/s : Mr. Binod Bihari Singh, APP

(In CR. APP (SJ) No.379 of 2003)

For the Respondent/s : Mr.

(In CR. APP(SJ) No. 406 of 2003 : Mr. Sujeet Kumar Singh, APP

CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA



ORAL JUDGMENT

Date: 14-03-2018

Since all the three appeals arise out of the common judgment and order they have been heard together and are being disposed of by this common judgment.

2. All the appellants stand convicted under Sections 364/34 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for five years vide judgment and order dated 19.7.2003 passed by Sri Chandra Shekhar Sharma, the then Presiding Officer Additional Court No.1, Ad hoc Sessions Judge, FTC No.1, Patna in Sessions Trial Case No. 169 of 1995/359 of 2001.

3. Prosecution case as per written report of informant Sadhu Paswan (PW 3) in short, is that on 18.6.1994 at 7 A.M. while he along with his son Dayanand Paswan alias Daroga Paswan and Dwarik Thakur had gone to plough the field of Dharmendra Kumar Singh alias Chutur Singh, situated in Nalla-Dhibarpar, about 20-25 persons came there and all started to assault Daroga Paswan and Dwarik Thakur with fists, slaps and lathi and they took both of them towards Lodipur-Musahari and further case of the prosecution is that out of them, informant identified Arbind Kumar, Bhim Ram, Surendra Ram, Ramesh Ram, Binod Ram, Kishun Pandit, Mithilesh Ram, Yogendra Ram, Naresh Manjhi and Malha Manjhi and informant suspected that the aforesaid accused persons along with some unknown persons



abducted his son Dayanand Paswan and one Dwarik Thakur with an intention for committing their murder.

4. On the basis of aforesaid written report Punpun P.S. Case No. 52 of 1994 was registered under Section 364 IPC. Police after investigation submitted charge sheet against the appellants and other accused persons and cognizance of the offence has been taken and after commitment the case traveled to the file of the learned trial judge for trial and disposal.

5. All the seven appellants have been charged under Sections 364/34 IPC for abduction of Dayanand Paswan alias Daroga Paswan and Dwarik Thakur with an intention to commit murder.

6. Prosecution in order to substantiate its case has examined altogether 11 witnesses, they are PW 1 Dwarik Thakur, who is one of the victim and turned hostile, PW 2 Lal Bahadur Singh, PW 3 Sadhu Paswan, who is informant of this case and father of victim Daroga Paswan, PW 4 Basmatia Devi, who is mother of victim Daroga Paswan, PW 5 Arjun Paswan, who is son of informant, PW 6 Dayanand Paswan alias Daroga Paswan, who is the second victim, PW 7 Dharmendra Kumar, PW 8 Maha Sundari Devi, who is wife of PW 1 Dwarik Thakur and has turned hostile, PW 9 Bipin Kumar Thakur, who is Officer-in-charge of Punpun Police Station, PW 10 Dr. Rajiv Kumar Singh, who has examined PW 6 Daroga Paswan and



PW 11 is I.O. of this case.

7. Apart from the following oral evidence, the prosecution has brought on record the following documents as documentary evidence, they are Ext.1-injury report, Ext.2-forwarding report, Ext.3-case diary, Ext.4-written report, Ext.4/1-forwarding report on written report, Ext.5-FIR, Ext.6-certified copy of formal FIR, Ext.7-certified copy of written statement.

8. On behalf of defence it appears that no evidence has been examined nor any document has been brought on record. However, their defence is on the basis of trend of cross examination and statement under Section 313 Cr.P.C. of false implication and innocence. Further defence is that as the informant and others were accused in a murder case of Sukhdeo Singh in which accused persons were witnesses, as such they have falsely been implicated in this case.

9. Learned trial court after conclusion of trial has convicted the appellants under Sections 364/34 IPC and sentenced them as stated above.

10. Being aggrieved by the aforesaid judgment all the three appeals have been preferred by the appellants.

11. Contention of learned counsel for the appellants is that even if the prosecution evidence is believed, no offence is made out under Section 364/34 IPC as there is nothing available on record to



show that PWs 1 and 6 were abducted with an intention to kill. Further contention of learned counsel is that one of the victim has been declared hostile as he has not supported the prosecution case and so far other victim and other witnesses are concerned, their evidence is not consistent so far story of kidnapping is concerned and furthermore from cross examination it appears that there is enmity between the parties with respect to a murder case in which informant and others were accused and accused persons were the witnesses in that case. However, learned trial court has not considered the aforesaid infirmities in the prosecution case and has convicted the appellants under Sections 364/34 IPC.

12. On the other hand, learned counsel for the State in all the appeals have defended the judgment on the ground that evidence of PW 6 Dayanand Paswan alias Daroga Paswan has supported the prosecution case that he was kidnapped by accused persons and taken to Lodipur and he was assaulted by accused persons and when he agreed to obey their direction he was left and other witnesses, i.e., PWs 2, 3 and 4 have also supported the prosecution story and Dr. Rajiv Kumar Singh (P.W.10), who has examined PW 6, the victim Daroga Paswan and found several injuries on his person and, as such, the conviction of the appellants under Sections 364/34 IPC appears to be just and proper and does not suffer from any infirmity.



13. On close scrutiny of evidence in the background of rival submissions of the parties it appears that in this case PW 3, who is the informant in this case, and has stated in his evidence in court that about 7 A.M. in the morning, was working in the field of Chatur Babu and Daroga Paswan and Dwarik Thakur were there, in the meantime 20-25 persons came and started assaulting Daroga Paswan and Dwarik Thakur and took them towards Lodipur. This witness claimed to identify those persons as Arvind Singh, Bhim Ram, Surendra Ram, Ramesh Ram, Yogendra Ram, Mithilesh Ram, Binod Ram, Kishun Pandit, Naresh Manjhi and Malha Manjhi. He also identified them in the dock also. This witness has also been cross examined and his cross examination shows that during marpit no outsiders came there and he has not gone to save his son. This witness, however, has admitted that Sukhdeo Ram has been murdered and in the murder case his son and Chatur Singh have been made accused. He has also stated that he does not know as to whether accused persons are witnesses in that case. In spite of his cross examination there does not appear any inconsistency in his evidence.

14. PW 1 is one of the victims and has been declared hostile as he has not supported the prosecution case.

15. PW 2 Lal Bahadur Singh has supported the prosecution case and has stated that 20-25 persons came armed with lathi and



taken away Daroga Paswan and Dwarik Thakur towards Lodipur and he has also identified Arvind Singh, Kishun Pandit, Suresh Manjhi, Bhim Ram, two sons of Bhim and son of Bhikhan Ram and he also identified accused Ramesh, Surendra Ram as sons of Suresh though they are sons of Bhim. He also identified Mithilesh, son of Bhikhan Ram in the dock and also claimed to identified the remaining accused persons. This witness has also been cross examined on the point of murder case of Sukhdeo Ram and on the question put to him that whether accused persons of this case are witnesses in that case, he has also stated that he does not know. This witness has also stated about assault to Dwarik Thakur and Daroga Paswan and contradiction has also been taken from the earlier statement in paragraph-6 and a suggestion has also been given to him that in order to save their skin from the murder case of Sukhdeo Ram the present false and concocted case has been lodged.

16. PW 4 is the mother of the victim Daroga Paswan and she has supported the manner of occurrence and has stated that at the time of occurrence she was tending she buffalo in the field of Tuntun and Daroga Paswan (P.W.6), Sadhu Paswan (P.W.3) and Dwarik thakur (P.W.1) were working in the field of Chutur Singh (P.W.7) and in the meantime 20-25 persons came there and they surrounded Daroga Paswan and started to assault him and took him towards east.



However, she has not named any accused persons except Arvind Singh and Kishun Pandit in chief. This witness has also been confronted with the murder case of Sukhdeo Ram and in her evidence she has admitted that Daroga Paswan and Chatur Singh are the accused persons in that case.

17. PW 5 has been tendered for cross examination and PW 6 is the second victim in this case and he has stated that he was working in Nalla-Khandha along with his father Sadhu Paswan, Lal Bahadur Singh (PW 2), Dwarik thakur (PW 1) and his mother (PW 4) and in the meantime 15-20 persons came there and surrounded him and he has named Arbind Singh and Kishun, who were stated to be armed with pistol and he also identified Bhim, Ramesh, Surendra, Binod, Mithilesh, Naresh and Malha and identified them in the dock. He has also stated that they took him towards east of the village saying that they will kill him and thereupon all the accused persons started to assault him and when he was taken to Lodipur the accused persons got his eyes tied with gamchha and in the evening Arvind and Kishun came there and opened his eyes and they pierced gupti on his hand and cheek and also assaulted on his feet with lathi and he started crying and admitted that he will abide by their direction and thereafter they left him. Even in his cross examination he has stated that while he was taken away he was assaulted. Contradiction has also been



taken from the earlier statement in paragraph-6 to his cross examination and he has also admitted in paragraph-10 that dead body of Sukhdeo Ram was found in river Punpun by throwing net. As contract was given in the name of Arbind Singh, who got the dead body recovered and Arbind Singh was annoyed for the same.

18. PW 7 has been tendered for cross examination, whereas PW 8 has been declared hostile by the prosecution. PW 9 is the I.O. in this case and PW 10 is Doctor, who has stated that he examined Dayanand alias Daroga Paswan (PW 6) on 18.6.1994 and found the following injuries :

- (i) Swelling 4" x 4" on the left hand near wrist joint,
- (ii) Cutting injury $\frac{1}{4}$ " x $\frac{1}{2}$ " on the left cheek,
- (iii) Cutting injury $\frac{1}{2}$ " x $\frac{1}{4}$ " on the left elbow joint
- (iv) Cutting injury on the left leg 4" below the knee joint
2" x $\frac{1}{4}$ ".

According to him, all the injuries were simple in nature caused by hard and blunt substance, except injury No. (ii) which may be of sharp weapon and injury report has been marked as Ext.1

19. PW 11 is the I.O. and he has proved the written report in this case.

20. However, learned counsel for the appellants has drawn my attention towards evidences of PW 3 in which he has stated that no



outsider was present at the time of occurrence and in spite of that PW 2 Lal Bahadur Singh and PW 4 Basmatia Devi claim to be eye-witnesses to the occurrence. FIR also does not show that those persons were present there.

21. On perusal of the evidence I find force in the submission of learned counsel for the appellants. However, learned counsel for the appellants further submitted that in this case provisions of Section 313 Cr.P.C. have not been complied by the prosecution and no specific question has been put towards the circumstances which have come against the appellants, rather general questions have been asked from all the accused persons. Further submission of learned counsel is that in any view of the matter no case is made out under Sections 364/34 IPC against the appellants, as there is no evidence available on record that PWs 1 and 6 were abducted for murder, rather they had been let off by the appellants.

22. No doubt, in the present case on the basis of evidence available on record I find that no offence is made out under Sections 364/34 IPC as there is no allegation that the victims were abducted with an intention to kill them, rather from the evidence it appears that they have been abducted for obeying the direction of accused persons. However, there is evidence that victims were forcibly abducted and put to wrongful confinement. However, so far submission of learned



counsel for the appellants is that no accused person has been asked in their statements under Section 313 Cr.P.C. specific evidence that has come against them and general questions were asked. In this connection learned counsel for the appellants has relied upon a decision of the Hon'ble Apex Court in the case of **Sukhjit Singh vs. State of Punjab : (2014) 10 SCC 270**, after relying upon earlier judgment of Hon'ble Apex Court in the case of **Ajay Singh vs. State of Maharashtra: (2007) 12 SCC 341** and has laid down the principle that the requirement of Section 313 of the Code of Criminal Procedure is to draw the attention of the accused to the specific points, materials and evidences available against him, put to these to him and seek explanation for the same. In case of Ajay Singh (supra), the Hon'ble Apex Court in paragraph-14 of the judgment has laid down the principle that has to be followed for complying with the provision of Section 313 Cr.P.C., which is as follows :

“14. The word “generally” in Sub-section (1)(b) does not limit the nature of the questioning to one or more questions of a general nature relating to the case, but it means that the question should relate to the whole case generally and should also be limited to any particular part or parts of it. The question must be framed in such a way as to enable the accused to know what he is to explain, what are the circumstances which are against him and for which an explanation is needed. The whole object of the section is to afford the accused a fair and proper opportunity of explaining circumstances which appear against him and



that the questions must be fair and must be couched in a form which an ignorant or illiterate person will be able to appreciate and understand. A conviction based on the accused's failure to explain what he was never asked to explain is bad in law. The whole object of enacting Section 313 of the Code was that the attention of the accused should be drawn to the specific points in the charge and in the evidence on which the prosecution claims that the case is made out against the accused so that he may be able to give such explanation as he desires to give."

After considering the aforesaid, in the case of Sukhjit Singh (supra), the Hon'ble Supreme Court says that in case, the requisites questions are not put to the accused and if there is non compliance of the statutory requirement of Section 313 Cr.P.C., prejudice is deemed to have been caused to the accused and this vitiates the entire trial and a conviction based on such a vitiated trial is unsustainable.

23. In the background of above settled guidelines laid down by the Hon'ble Supreme Court in the said judgment it appears that there is no compliance of Section 313 Cr.P.C. in the present case as no specific question has been put to the accused appellants, rather general questions were asked from them. No question was asked that they were assaulted by Gupti by Arbind Singh and they were abducted to wrongful confine the PWs 1 and 6 and that certainly vitiates the conviction of the appellants under Sections 364/34 IPC. Further learned trial court has also failed to consider that no case is made out



under Sections 364/34 IPC on the basis of evidence available on record and secondly there is no proper compliance of Section 313 Cr.P.C. However, in spite of that, learned trial court has convicted the appellants under Sections 364/34 IPC.

24. Considering the aforesaid view of the matter, these appeals are allowed. The impugned judgment and order are set aside. As the appellants are on bail, they are directed to be discharged from the liabilities of their bail bonds.

(Vinod Kumar Sinha, J)

spa/-

AFR/NAFR	
CAV DATE	
Uploading Date	18.3.2018
Transmission Date	18.3.2018

