

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Criminal Appeal (DB) No.321 of 1995**

.....

{Against the Judgment of conviction and sentence order dated 21.09.1995 passed by the 1<sup>st</sup> Additional Sessions Judge, Madhepura, in Sessions Case No.61 of 1991}.

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Surendra Yadav, son of Khusi Lal Yadav, resident of village-Chakla, P.S. Madhepura, District-Madhepura.

... .. Appellant.

Versus

The State of Bihar

... .. Respondent.

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**Appearance :**

For the Appellant : Mr. Amrit Anunay, Amicus Curiae.  
For the State : Mr. Shiwesh Chandra Mishra, A.P.P.

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**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA**  
**and**  
**HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA**  
**ORAL JUDGMENT**  
**(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA)**

**Date : 26-07-2018**

This criminal appeal has been preferred by the sole appellant Surendra Yadav against the Judgment of conviction and sentence Order dated 21.09.1995 passed by the 1<sup>st</sup> Additional Sessions Judge, Madhepura, in Sessions Case No.61 of 1991, by which and whereunder he convicted the sole appellant for the offences punishable under Sections 364, 302 and 201 of the Indian Penal Code and sentenced him to undergo life imprisonment for the offence punishable under Section 302 of the Indian Penal Code, to undergo rigorous imprisonment for



six years for the offence punishable under Section 364 of the Indian Penal Code and to undergo rigorous imprisonment for three years for the offence punishable under Section 201 of the Indian Penal Code. The learned Additional Sessions Judge directed to run the above stated sentences concurrently. However, by the said Judgment of conviction and sentence Order, the learned trial court acquitted the accused Shivo alias Shivanand Yadav, Krishna Dev Yadav and Chhotelal Yadav.

2. P.W.3, namely, Bilash Yadav, gave his fardbeyan to the Officer Incharge of Madhepura Police Station on 21.09.1988 at about 04.00 P.M. to this effect that in the month of 'Asarah', his son-in-law, namely, Surendra Yadav (appellant) and his brothers, namely, Krishna Dev Yadav, Shivo Yadav and one Chhotelal Yadav, took his daughter forcibly from his house. He further claimed that 20-25 days ago, he got information regarding the missing of his daughter and, then, he went to the house of the appellant and enquired from him about the whereabouts of his daughter but the appellant Surendra Yadav did not give any response and, similarly, his other family members also did not response and, thereafter, he enquired from Baukoo Yadav and Subash Yadav, the co-villagers of the appellant, and, then, he came to know that the appellant and his



family members got disappeared or sold her daughter.

3. On the basis of the aforesaid fardbeyan of P.W.3, Madhepura P.S. Case No.192 of 1988 for the offences punishable under Sections 363, 364 and 368/34 of the Indian Penal Code was registered against the appellant and others.

4. P.W.6 Ramayan Ram took the charge of investigation and after completion of investigation, he submitted the chargesheet against the appellant and others.

5. The cognizance of the offence was taken and after commitment, the appellant along with three other accused were put on trial.

6. The appellant and other accused persons stood charged for the offences punishable under Sections 364, 302/34 and 201 of the Indian Penal Code. The appellant and other accused denied the charges.

7. To prove the charges, the prosecution examined, altogether, six witness.

8. The statements of the appellant and others were recorded under Section 313 of the Code of Criminal Procedure in which they reiterated their innocence. No evidence was adduced by the appellant and other accused in support of their defence.



9. The learned trial court having analyzed the evidences, available on the record, convicted the appellant but acquitted the other accused in the manner, as we have already stated above.

10. Learned Amicus Curiae appearing for the appellant challenged the impugned Judgment of conviction and sentence order, arguing that the learned trial court has convicted the appellant only on the basis of surmises and conjectures. He further submitted that the learned court below failed to appreciate the evidences, available on the record, in its right perspective and also failed to take note of this fact that except P.W.3, none of the prosecution witnesses supported the prosecution case. He further submitted that so far as P.W.3 is concerned, he has himself admitted that even after marriage, his daughter was residing with him and the appellant used to visit his house often. Learned Amicus Curiae further submitted that P.W.3 admitted in his statement that 20-25 days prior to recording of his statement by the police, the appellant and other accused had taken away his daughter forcibly but, even then, he lodged the case after 25 days of the aforesaid incident and no explanation regarding the aforesaid delay was given. He further submitted that the statement of P.W.3 was recorded on



21.09.1988 but, surprisingly enough, the F.I.R. was placed before the court on 24.09.1988, i.e., after three days of recording the F.I.R. and no explanation of the aforesaid delay has been given by the prosecution. He further submitted that even if the evidences, available on the record, are assumed to be correct, then also, a suspicion can only be raised against the appellant and it is well settled principle of law that the suspicion, however, may be strong, cannot take place of evidence.

**11.** On the other hand, learned Additional Public Prosecutor supported the impugned Judgment of conviction and sentence order, arguing that the appellant admitted in his statement, recorded under Section 313 of the Code of Criminal Procedure, that the informant's daughter was his wife and P.W.3 clearly stated that his daughter was taken away by the appellant and others from his house and, thereafter, she went missing and, therefore, the aforesaid circumstance is sufficient to show the guilt of the appellant.

**12.** Having heard the rival contentions of both the parties, we went through the record.

**13.** We find that P.W.1, P.W.2, P.W.4 and P.W.5 have been declared hostile and they have not supported the prosecution case. P.W.3 is informant and P.W.6 is the



Investigating Officer.

**14.** P.W.3 supported the prosecution case and stated that the family members of the appellant were not happy with the marriage of his daughter with the appellant and, after that, the appellant took his daughter to Punjab against his wishes. This witness further stated that in the month of 'Asarah', the appellant and others took his daughter to Singheshwar and from there, they came to Madhepura and, thereafter, his daughter went missing. This witness further stated that he made search of his daughter and after 1½ months, his son-in-law returned and he made enquiry from his son-in-law about the whereabouts of his daughter. This witness, on being cross examined by the defence, admitted that his daughter had never gone to her in-laws' house rather the appellant used to visit his house in his absence. This witness further stated that when his daughter went missing, he lodged the case on the basis of suspicion. This witness further stated that his daughter was short-tempered lady and she used to give threatening to commit suicide.

**15.** On careful examination of the statement of P.W.3, we find that he raised suspicion against the appellant when his daughter went missing. Furthermore, P.W.3, very



clearly admitted that his daughter was residing at his home, even after her marriage.

**16.** No doubt, P.W.3 claims that it was appellant and others, who took his daughter forcibly from his house but, admittedly, after the aforesaid incident of taking away of his daughter forcibly by the appellant and others, P.W.3 did not lodge any case and he lodged the present case when his daughter went missing. Therefore, even if the evidences, available on the record, are taken as gospel truth, then also, only suspicion can be raised against the appellant and it is well settled principle of law that suspicion cannot take place of evidence, however, it may be strong. Therefore, in the aforesaid circumstance, we are of the opinion that the impugned Judgment of conviction and sentence order cannot sustain in the eye of law.

**17.** Accordingly, this appeal is allowed and the impugned Judgment of conviction and sentence order is, hereby, set aside. The appellant is acquitted of the charges framed against him. He is on bail. He is discharged from the liabilities of bail bonds.

**18.** Let the copy of the first page and last page of the Judgment be handedover the learned Amicus Curiae so that



he may claim for his legal remuneration from the competent authority.

(Hemant Kumar Srivastava, J)

( Rajendra Kumar Mishra, J)

Pradeep Srivastava/-

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