

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Appeal (SJ) No.349 of 2003**

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

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Balkishun Rabidas son of Bihari Rabidas, of village Gonawan, behind the Jain  
Mandir Pokhar Par, P.S. and District Nawadah.

.... .... Appellant

Versus

State of Bihar

.... .... Respondent

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**Appearance :**

For the Appellant : Mr. Arun Kumar Tripathi, Amicus Curiae

For the Respondent : Mr. Binod Bihari Singh, A.P.P.

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**CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA**

**ORAL JUDGMENT**

**Date: 05-07-2018**

This appeal is directed against the judgment and order dated 1.5.2003 passed by Sri Kamla Prasad Sinha, Presiding Officer, Addl. Court of Sessions, Fast Track, Nawada in Sessions Trial No.219 of 2002/55 of 1992 by which he has convicted the sole appellant under Section 364 of the Indian Penal code.

2. The prosecution case as per the fardbeyan of Pyari Devi (informant) who is wife of the victim Sidheshwar Rabidas has stated before the police that the appellant came along with one accused to her house on the pretext that he has come to see his son Karu Rabidas for marriage of his daughter and thereafter the appellant pressed to her husband to accompany them to see the bride and on the same day at about 4.00 P.M. on 10.9.1988 took the husband of the informant on the pretext to see the bride however, the days passed but her husband



did not return and the appellant returned after four days and on enquiry from the appellant, no satisfactory reply was given, she searched her husband here and there for a week but did not find anywhere and she has suspected that her husband has been killed. It is also alleged that the appellant was associated with Ultras of Jehanabad and Masaurhi.

3. Ono the basis of the aforesaid fardbeyan Nawada P.S.Case no.223 of 1988 was registered, post investigation charge-sheet has been submitted and the cognizance of the case has been taken and the case was committed to the court of sessions which ultimately came to the file of Sri Kamla Prasad Sinha, Presiding Officer, Addl. Court of Sessions, Fast Track, Nawada for trial and disposal.

4. The charges have been framed against the appellant under Section 364 of the IPC. The prosecution in order to prove his case has examined altogether 6 witnesses, they are P.W.1 Anarba Devi, P.W.2 Jugal Kishore Jain, P.W.3 Sitaram Malakar, P.W.4 Pyari Devi (informant), P.W.5 Sarjug Rabidas and P.W.6 Rajesh Krishon. Out of the above witnesses P.W.6 is the formal witness who has proved the petition of complaint Ext.1. The endorsement of the officer I/C Nawada on the petition of complaint Ext.2 and formal FIR Ext.3. P.Ws. 3 and 5 have been declared hostile. In this case I.O. has not been examined.



5. The learned trial court considering the evidence of P.Ws. 1, 2 and 4 has convicted the appellant under Section 364 Cr.P.C. and sentenced him to undergo R.I. for seven years.

6. The learned Amicus Curiae while assailing the judgment has submitted that in this case the learned trial court while considering the evidence of P.Ws. 1, 2 and 4 has convicted the appellant but their evidence does not show that the husband of P.W.4 was taken by using some force and further submission is that there is absolutely nothing to show that the appellant has any motive to kill the deceased and any animosity from before to kill the deceased and I.O. has not been examined in this case as such in absence of non-examination of the I.O. has caused serious prejudice to the appellant, hence, conviction of the appellant under Section 364 of the IPC is not sustainable in the eye of law.

7. Heard learned counsel for the State, who has supported the finding of the guilt and submitted that the evidence of P.W.1, 2 and 4 discloses that the deceased was taken by the appellant and one another co-accused and evidence of P.W.4 shows that the deceased was taken on the pretext of seeing the bride for the purpose of marriage with his son and since then the husband of the informant is traceless and no explanation has been given by the appellant for his disappearance and in such a situation, conviction of the appellant under Section 364 IPC is just and proper and does not require any



interference by this Court.

8. In the background of the submission and on perusal of the evidence, it appears that P.W.4 has stated in her evidence in court that the appellant along with one unknown person came to the house of the informant at about 12 O'clock and introduced one unknown person of the village of Masaurhi of District Patna that he has come to see her son Karu Rabidas for the purpose of marriage of his daughter with her son and he asked her husband to go with them to see the bride and in spite of the fact that her husband told that when marriage would come he would go to see the bride but the appellant pressed and persuaded her husband to accompany them and took her husband and thereafter the appellant came after four days but her husband did not return and on enquiry the appellant has not given any satisfactory reply, she waited for one week that her husband to return and thereafter she filed the present case. It further comes in the evidence that the appellant was brother-in-law of her husband and relation between them was not strained. It has also come in her evidence that prior the deceased and the appellant used to live together and used to take food and drink together.

9. P.W.1 has also disclosed that she was present at the house of deceased at the relevant time and the appellant came there at about 12 O'clock along with one unknown person with respect to marriage of his son thereafter they went together and the deceased did



not return and he is traceless since then. Even from her cross examination, it appears that she was present in the house of the informant at that time however she had not seen when they had left the house.

10. P.W.2 is the Tea Seller and his evidence shows that the appellant along with one unknown person went to the house of the appellant and they left village together and he is traceless.

11. On perusal of the evidence it appears that there are evidence of P.W.1 and 4 that the appellant came with an unknown person and took the husband of the informant on misrepresentation to see the bride and since then he is traceless, however, on perusal of the evidence it appears that there was no animosity between the parties from before and even prosecution has not come with any motive and even there is nothing in their evidence to show that the appellant has taken her husband to murder or dispose of his body. Evidence of P.W.2 also shows that he had seen the appellant lastly along with husband of the informant, however, he is not witness on the false misrepresentation.

12. So far section 364 of the IPC is concerned, it is in two part (1) accused compel the person to go from the place in question and that may be by means of force or the appellant induced the person. (2) He was abducted or murdered or disposed of.

13. Though there are evidence available on the record that the



appellant has taken the deceased on the plea that unknown person wanted to marry his daughter with the son of the deceased and for that he has taken the deceased to see the bride and thereafter the appellant has gone and he is traceless and that clearly shows that the appellant has taken the deceased by misrepresentation and the deceased is traceless. It further appears that the appellant has not any given any explanation for his disappearance. He has simply stated that even in his statement under Section 313 of the Cr.P.C. that the deceased had not gone along with him, however, so far Part 2 of Section 364 of the IPC is concerned, that shows that the person so abducted had been taken for murder or to dispose of body in order to murder.

14. As discussed above, there is nothing available on the record to show any motive of the appellant behind kidnapping of the person as there is no animosity between the parties from before nor there is any evidence that the appellant so abducted with a view to murder him, on the other hand appellant is own brother- in- law and they used to live together, however, the learned trial court has not appreciated that there is no evidence available on the record to show that the appellant was carrying any intention at the time of abduction to murder the deceased or to dispose of his body has convicted the appellants under Section 364 IPC. In such a situation, ingredients of Section 364 of the IPC is missing.

15. However, from perusal of the evidence as discussed



above, it appears that there are sufficient evidence available on the record to show that the misrepresentation has taken the deceased along with him and thereafter he is traceless and as such in such view of the matter the appellant can be convicted under Section 363 of the IPC and not under Section 364 of the IPC. It further appears that the appellant has remained in custody for more than one year and six months and submission of the learned counsel for the appellant is that the appellant was aged about 60 years at the time of conviction and now 15 years have passed, as such he must be 75 years of age as such his sentence be modified to the period already undergone in custody.

16. On perusal of the record and considering the period of the custody , the conviction of the appellant is modified from Section 364 of the IPC to Section 363 of the IPC. He is sentenced under Section 363 of the IPC to the period already undergone in custody.

17. With the aforesaid modification in conviction and sentence, this appeal is disposed of.

**(Vinod Kumar Sinha, J)**

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