

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.304 of 2002

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Krishna Singh & Ors

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Krishna Pd. Singh, Sr. Adv.
Mr. Bhaskar Shankar, Adv.
Mr. Rakesh Singh, Adv.

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

For opposite party no. 2 : Mr. Jharkhandi Upadhyay, Adv.

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 16-01-2018

By way of present appeal, appellants seek to challenge the Judgment of conviction dated 12.06.2002 and order of sentence dated 17.06.2002, passed by Shri Bipin Dutta Pathak, XIth, Additional Sessions Judge – Saran at Chapra, in Sessions Trial No. 244/97, by which the appellants were convicted under Section 365/34 of the Indian Penal Code (hereinafter referred to as the “IPC”) and were sentenced to undergo R.I. for 07 years with a fine of Rs. 1,000/- each and half of the said amount was directed to be paid to the victim, having default clause.

2. Prosecution case in short as per the written statement of informant (P.W. 4) given before the Officer –in – Charge Parsa Police Station on 27.10.1994 is that when grand father of informant had gone to village Anyay to blacksmith for sharpening plough, in the way



accused persons abducted him with intention to take his thumb impression for execution of sale deed in their favour. On the basis of said written statement, Parsa P.S. Case No. 96/94 was registered against the accused persons.

3. Police after investigation submitted charge-sheet against the appellants. Cognizance of the offence was taken and the case was committed to the court of sessions, which ultimately came to the file of Shri Bipin Dutta Pathak, XIth, Additional Sessions Judge – Saran at Chapra, for trial and disposal.

4. To prove its case, prosecution has examined altogether six witnesses. They are; P.W. 1- Binda Singh, P.W. 2 – Rajendra Singh, P.W. 3- Vishwanath Singh, P.W. 4- Upendra Kumar (informant), P.W. 5- Rambriksh Singh (victim), P.W. 6 – Ram Nand Sagar (I.O.)

5. Apart from that following documents have been brought on record and marked as Ext. 1 – Signature of informant on *fardbeyan*, Ext. 2 – Formal F.I.R, Ext. 3- Case diary, Ext. 4 and 4/1 – Attested photo copies of orders of High Court in First Appeal No. 596 /2000 dated 10.05.2001 and 24.08.2001.

6. From the side of defence, one witness has been examined, namely, Sarbanand Pandey as D.W. 1, a formal witness, who proved the judgment in Title Suit No. 302/94 and following documents were also brought on record and marked as Ext. A – plaint of T.S. No. 302/94 of the court of 4th Sub Judge, Chapra, Ext. B – Judgment of



T.S. No. 302/94 of 4th Sub Judge, Chapra.

7. When examined under Section 313, Cr.P.C appellants pleaded not guilty and denied the allegation.

8. Post trial, the learned trial court convicted the appellants under Section 365/34 of the IPC and sentenced them in the manner as stated above.

9. Submission of learned Senior Counsel, appearing on behalf of appellants is that admittedly P.W. 4 is not the eye-witness of the occurrence and though P.W. 1, P.W. 2 and P.W. 3 claimed to be eye witness of abduction of his grandfather (P.W. 5), however, none of the witnesses are named in the F.I.R and evidence of P.W. 3 shows that except him non had seen the abduction of his father, which demolishes the evidence of other witnesses. It has also been submitted that evidence of P.W. 2 shows that he was at inimical terms with the appellants and he has stated in para -2 of his evidence that appellant – Sheoji Singh had constructed a house over his land and, therefore, his evidence does not appear to be reliable. Further submission of learned Senior counsel is that P.W. 5 -, who is alleged to be the victim in this case, has stated in his evidence that after being released by the appellants, he met one Krishna Singh, who kept the victim with himself in the night but surprisingly said Krishna Singh has not been examined in this case coupled with the fact that none of the witness from the village Anyay, where the occurrence allegedly took place,



were examined, which has certainly caused serious prejudice to the defence and even if the prosecution case is believed to be true, it appears to be a land dispute between the parties, which will be evident from the fact that a Title Suit was filed by the informant and others with respect to cancellation of sale deed i.e. Title Suit No. 302/94, which was decided in favour of the appellant, against which First Appeal was preferred by the informant and now a compromised has been reached between the parties, in support of this contention, he has filed a compromise petition signed by the parties and the signature of victim – Rambriksh Singh (P.W.5) could not be taken as he died during pendency of appeal. On the basis of above, it has been urged that there was a land dispute between the parties and now parties have also compromised the matter and appellants have not been involved in any other case, therefore, they deserve the lenient view of the Court. In support of his contention, he has relied upon a decision of Hon'ble Supreme Court in the case of **Rajendra Harakchand Bhandari & Ors. v. State of Maharashtra & Anr.** reported in **2011(3) PLJR 74 (SC)**

10. On the other hand, learned counsel for the respondent – State supported the finding of guilt recorded by learned Trial Court and submitted that there are consistent evidence of all the witnesses regarding abduction of the victim (P.W. 5) and the P.W. 5 being the victim of the case, veracity of his evidence cannot be doubted. Further



evidence of P.W. 1, P.W. 2 and P.W. 3 shows that they are the eye – witness of the occurrence and, therefore, there is no infirmity in the judgment of Trial Court and conviction of appellant under Section 365/34 of the IPC is just and proper. However, learned counsel for the informant has admitted that now both the parties has reached to a settlement and compromise petition has also been filed.

11. Heard the rival parties.

12. P.W. 4 is the informant in this case and claims himself to be eye-witness of the occurrence. So far other witnesses i.e. P.W. 1, P.W. 2 and P.W. 3 are concerned, they are not F.I.R name witnesses. Furthermore, evidence of P.W. 3 shows that except him non was present at the place of occurrence. It further appears that P.W. 5 – Rambriksh Singh (victim) has also stated in para -5 of his evidence that none had seen the occurrence, while appellants were taking him into the vehicle. His evidence also shows that after getting freed from the clutches of the appellants, he met one Krishna Singh, with whom, he spent the said night, thereafter, he came back to his house, but the aforesaid Krishna Singh, who appears to be an important witness, has not been examined. However, it appears that P.W. 5 has supported the case with regard to his kidnapping by the appellants and there is nothing to doubt the veracity of evidence of this witness.

13. Apart from that it also appears that informant had preferred a Title Suit, which was decided in favour of the appellants, though later



on First Appeal was preferred by the informant. Moreover, in this case as submitted by learned Senior Counsel for the appellant and as agreed upon by learned counsel for the informant, who is present in the Court that now a compromise has been reached between the parties, which has been signed by both sides and further an affidavit has also been filed, showing that the victim – Rambriksh Singh had died.

14. Considering the aforesaid aspect of the matter as well as the fact that case relates to execution of sale deed with respect to which dispute was going on and now the parties have compromised the matter as per the compromise petition, though the offence is not compoundable, Hon'ble Apex Court in the case of **Rajendra Harakchand Bhandari** (supra), considered application of compromise between parties in a non compoundable case and held in para 16- 17 as under:-

16. We must immediately state that the offence under Section 307 is not compoundable in terms of Section 320(9) of the Code of Criminal Procedure, 1973 and, therefore, compounding of the offence in the present case is out of question. However, the circumstances pointed out by the learned senior counsel do persuade us for a lenient view in regard to the sentence. The incident occurred on May 17, 1991 and it is almost twenty years since then. The appellants are agriculturists by occupation and have no previous criminal background. There has been reconciliation amongst parties; the relations between the appellants and the victim have become cordial and prior to the appellants' surrender, the parties have been living peacefully in the village. The appellants have already undergone the sentence of more than two and a half years. Having regard to these circumstances, we are satisfied that ends of justice will be met if the substantive sentence awarded to the appellants is reduced to the period already undergone while maintaining the amount of fine.

17. Consequently, while confirming the conviction of the appellants for the offences punishable under Section 307 read with



Section 34, Section 332 read with Section 34 and Section 353 read with Section 34, the substantive sentence awarded to them by the High Court is reduced to the period already undergone. The fine amount and the default stipulation remain as it is.

15. In the case in hand too, it appears that there was land dispute between the parties and previously appellant were never convicted in connection with any other case and now compromise has also been reached between the parties. Accordingly, though conviction of appellant is upheld, however, substantive sentence awarded to them is reduced to the period already undergone by them in the judicial custody. However, the order of fine is confirmed.
16. With the above modification in sentence this appeal is dismissed.

(Vinod Kumar Sinha, J)

sunil/-

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