

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.312 of 2018

Arising Out of PS.Case No. -91 Year- 2015 Thana -ASAWAN District- SIWAN

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1. Rishikesh Singh, Son of Ramapayar Ray, Resident of Village- Arkapur, P.S. Asaon, District- Siwan.

.... Appellant/s

Versus

1. The State of Bihar.
2. Munshi Yadav, Son of Late Ranglal Yadav,
3. Bullet Yadav, son of Munshi Yadav, Both are Residents of Village- Arkapur, P.S. Asaon, District- Siwan.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Prashant Kumar, Adv

For the Respondent/s : Mr. S.B. Verma, APP

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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: 27-06-2018

Heard learned counsel for the appellant as well as learned Addl. Public Prosecutor for the State on the point of admission as well as IA No.922 of 2018. In our view, this appeal can be disposed off on admission stage itself.

2) The appellant is informant in Asaon P.S. No.91 of 2015 which was registered under Section 364, 302, 201, 120/34 of the IPC against the respondents No.2 and 3 as well as two other persons. The informant (appellant) claimed that on 10.11.2015 at about 12:00 PM his daughter, namely, Anuska Kumari, aged about 3 years along with



other children was playing in the field towards eastern side of his house. The respondent No.2 and 3 as well as other named accused were took away his daughter and subsequently her dead body was recovered from a ditch. The police investigated the case and submitted charge-sheet. The cognizance of the offence was taken and accordingly, appellant No.2 and 3 were put on trial before the Court below as the remaining accused could not be apprehended.

3) The respondent No. 2 and 3 were charged for the offences punishable under Section 364/34, 302/34, 201, 120B of the I.P.C.

4) Prosecution examined several witnesses and got exhibited certain documents. The defence also got examined defence witnesses.

5) The learned Court below (learned Additional Sessions Judge Vth, Siwan) having scrutinized the evidences available on the record acquitted the respondent No.2 and 3 of the charges passing impugned judgment of acquittal dated 22.12.2017 in S.Tr. No.354/2016 against which the appellant has filed the present criminal appeal.

6) Learned Counsel appearing for appellant challenged the impugned judgment of acquittal arguing that in course of trial, PW 1, PW-2 and PW-3 claimed to have seen the respondent No.2 and 3 as well as others taking away the deceased and furthermore, the defence witnesses also admitted this fact that the respondent No.2 and 3 as well as other accused were seen near the place where the deceased



was playing along with other children prior to her missing from the scene. Learned counsel submitted that the prosecution witnesses also disclosed this fact that there was previous enmity between the informant as well as respondents and other co-accused and, therefore, there was a complete chain of circumstances to show that it were respondent No.2 and 3 as well as other accused who not only kidnapped a minor girl but also committed her murder.

7) From perusal of impugned judgment, we find that the learned Court below has well discussed the evidences available on record and while discussing the evidences at para 31 of the impugned judgment doubted the statements of PW-1, PW-2 and PW-4 on the ground that the informant had not disclosed the name of aforesaid prosecution witnesses in his Ferdbeyan. The learned trial Court also came to conclusion that according to prosecution case itself, the informant learnt about taking away of his daughter by the respondent No. 2, 3 and other accused in course of search of his daughter from co-villagers and admittedly, the Ferdbeyan of informant was recorded after one day of the alleged offences but even then he did not disclose this fact in his ferdbeyan that PW-1, PW-2 and PW-4 had disclosed to him that it were respondent No.2, 3 and others who lost his daughter, and, therefore, the aforesaid circumstance creates doubt about the genuineness of statements of PW-1, PW-2 and PW-4.



8) In our view, the learned trial Court has raised genuine doubt regarding the deposition of PW-1, PW-2 and PW-4. So far as the statements of defence witnesses are concerned, the defence witnesses have stated only to the extent that the respondents No.2 and 3 as well as other accused were present in the field where the deceased (victim) was playing and even if the aforesaid statement of defence witnesses is taken into consideration, then also, the aforesaid statement does not complete the chain of circumstances and, therefore, we are of the view that there is no need to interfere into impugned judgment of the Court below. Accordingly, this Criminal Appeal stands dismissed at the stage of admission itself and I.A. No.922 of 2013 stands disposed of accordingly.

(Hemant Kumar Srivastava, J)

Sanjeev/-

(Rajendra Kumar Mishra, J)

AFR/NAFR	NAFR
CAV DATE	--
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