

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.1869 of 2018**

Arising Out of PS. Case No.-352 Year-2005 Thana- LAKHISARAI District- Lakhisarai

1. Rabbu Yadav and Anr Son of Late Mahaveer Yadav, Resident of Village- Sangrampur, P.S.- Chanan, District- Lakhisarai.
2. Uttam Yadav, Son of Late Baldev Yadav, Resident of Village- Sangrampur, Police Station- Chanan, District- Lakhisarai.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr.Yogesh Chandra Verma, Sr. Adv Mr. Umesh Prasad, Adv.
For the Respondent/s	:	Mr. Binod Bihari Singh, APP

**CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT**

23-08-2019

Appellants, Rabbu Yadav and Uttam Yadav

have been found guilty for an offence punishable under Section 364 of the IPC and each one has been sentenced to undergo RI for seven years as well as to pay fine appertaining to Rs. 5000/- in default thereof, to undergo RI for three months, additionally, under Section 120B of the IPC but no separate sentence has been passed therefor vide judgment of conviction dated 26.04.2018 and order of sentence dated 27.04.2018, by Additional Sessions JudgeFTC-1st, Lakhisarai in Sessions Trial No. 527/2008 arising out of Lakhisarai PS Case No. 352/2005.

2. Karyanand Saw (PW 3) filed written report on 23.10.2005 disclosing therein that his father Lakhan Saw



happens to be engaged in business of sale and purchase of paddy. Today i.e. on 23.10.2005 at about 4:10 AM, his father had loaded paddy over the tractor of a co-villager, LaxmanYadav in a way to Lakhisarai, which was being driven by one Dharmendra Mandal. Just a few minutes thereafter, at about 4:30 AM, the driver came along with tractor and disclosed that his father Lakhan has been kidnapped by seven unknown armed criminals near Bhandar Mor. After hearing this, he along with other co-villagers have gone in search of his father but in vain.

3. After registration of Lakhisarai PS Case No. 352/2005, investigation commenced. As is evident from the record, charge-sheet was submitted in fragment manner resulting so many sessions trial. Still one of the accused, namely, Naresh Yadav is absconding, as has been gathered from the lower court records. From the lower court record, it is also evident that driver Dharmendra Mandal was apprehended during course of investigation and was interrogated who, during course thereof, made an inculpatory extra judicial confessional statement before the police exposing the planning whereunder Lakhan Saw was kidnapped and further, dead body of aforesaid Lakhan Saw has been recovered subsequently, whereupon, as



stated above, segment wise as per appearance of the accused, charge-sheet has been submitted. It is further evident from the lower court record that result relating to earlier sessions trial is not available but, one of the accused, namely, Kedar Yadav was proceeded under Sessions Trial No. 741/2008 which ultimately concluded by way of verdict of acquittal and the certified copy of the deposition of relevant witness along with judgment are an exhibit of the record.

4. The status of the appellant No.2, Uttam Yadav as exposed from the inculpatory extra judicial confessional statement of driver is that of co-owner of the tractor while appellant no.1, Rabbu Yadav was one of the members of the gang who kidnapped Lakhan Saw and was subsequently, murdered.

5. Defence case as is evident from the mode of cross-examination as well as statement recorded under Section 313 CrPC is that of complete denial of occurrence. However, nothing has been adduced in defence.

6. Altogether five PWs have been examined in order to substantiate its case at the end of the prosecution namely, PW-1, Savitri Dev, PW-2, Jaya Devi, PW-3, Karyanand Saw, PW-4, Sanjay Saw @ Bochu Saw, PW-5, Rajesh Sharan.



No documentary evidence has been adduced.

7. As stated above, it is evident that the defence has only exhibited the judgment Ext-A, deposition of respective witnesses under exhibit-B series. However, no oral evidence has been adduced.

8. Now coming to the status of the witnesses, it is evident that PW-5 is the part IO who had simply submitted supplementary charge-sheet without conducting further investigation, after having presence of both these two appellants. PW-1 to PW-4 are not an eyewitness to occurrence.

9. PW-1 had named these two appellants but on hearsay basis. During cross-examination at para-2 she has stated that she had not seen the occurrence nor knew about the complicity of these two appellants. So far PW-2 is concerned, she completely, denied whereupon, declared hostile. PW-3 and PW-4 substantiated the factum of occurrence but, did not identify any including these two appellants nor shown suspicion against them. Consequent thereupon, this case happens to be of no evidence.

10. Gone through the judgment impugned wherefrom it is evident that the learned lower court has not given any logic on what basis it has formed an opinion adverse



to these two appellants. Though the lower court put reliance over the evidence of PW-1 but, overlooked her status to be that of a hearsay. That too, uncorroborated from any corner. Consequent thereupon, the judgment impugned is set aside. Appeal is allowed. Appellants are under custody, they are directed to be set at liberty forthwith if not wanted in any other case.

(Aditya Kumar Trivedi, J)

perwez

AFR/NAFR	AFR
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