

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL APPEAL (SJ) No.483 of 2003**

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1. Awadhesh Singh, son of Late Mathura Singh, resident of village Bansdih,  
P.S. Bheldih, District Saran, Chapra
  2. Bahadur Singh, son of Shri Dharam Nath Singh, resident of village  
Dhanuki, P.S. Marhaura, District Saran, Chapra

... .. Appellant/s

Versus

State of Bihar

... .. Respondent/s

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**Appearance :**

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|----------------------|---|---------------------------------|
| For the Appellant/s  | : | Mr. Mirityunjay Kumar, Advocate |
|                      | : | Mrs. Shilpa Kumari, Advocate    |
|                      | : | Mrs. Megha Kumari, Advocate     |
| For the Respondent/s | : | Mrs. Anita Kumari Singh, APP    |

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**CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA**  
**ORAL JUDGMENT**

**Date : 29-11-2023**

The present appeal has been preferred by the appellants/convicts under Section 374(2) of the Code of Criminal Procedure (hereinafter referred to as ‘the Code’) challenging the judgment of conviction dated 29.09.2023 and order of sentence dated 30.09.2023 passed by learned Additional District and Sessions Judge, Fast Track Court No. III, Saran at Chapra in Sessions Trial Case No. 424 of 1993, whereby the concerned Trial Court has convicted the appellants under Sections 364 and 385 of the Indian Penal Code (hereinafter referred to as ‘IPC’), where appellants/convicts have sentenced to undergo rigorous imprisonment for five years for the offence punishable under Section 364 of the IPC and rigorous



imprisonment for one year for the offence punishable under Section 385 of the IPC.

2. The factual matrix of the present case is as under:-

“Accused persons Awadhesh Singh and Bahadur Singh alongwith 5 to 6 persons came to the house of the informant Rameshwar Singh on 1.4.1992 at 5:00 P.M. and abducted his brother Dina Nath Singh and kept him in village – Issopur, P.S. Bheldi, Dist. Chapra till 2.4.1992. The informant tried to rescue his brother with the aid of his co-villagers, but as the accused persons were armed with pistol, gun and dagger he could not rescue him. The accused persons demanded Rs. 50,000/- as ransom for release of his brother. The accused persons asked the informant to come with ransom money of Rs. 50,000/- at Koria Bazaar and only after payment of ransom money, they would release him, otherwise they would kill his brother. They threatened the informant to do away with all his family members if he informed the police about this occurrence. It is further case of the informant that he did not went to the police station out of fear of the accused persons. Clandestinely he moved to Chapra and informed about the incident to the Chief Judicial Magistrate by way of complaint petition. The



informant and his brother were employees of P.H.E.D. Chapra. His two sons study at Chapra and there is danger to their lives at the hands of the accused persons.”

3. Thereafter informant Rameshwar Singh made a written information to the Superintendent of Police, Chapra. On the basis of said written information, Amnour (Bheldi) P.S. Case No. 39 of 1992 under Sections 363/34 and 364/34 of the Indian Penal Code, was registered.

4. After completion of investigation, charge-sheet was submitted by the police under Sections 363/34 and 385/34 of the Indian Penal Code before the Court of learned Chief Judicial Magistrate, Chapra.

5. On the basis of material available on record, as collected during the course of investigation, learned Jurisdictional Magistrate, took cognizance, and committed the case to the Session Division under Section 209 of the Cr.P.C., after compliance of provisions as available under Section 207 of the Cr.P.C. Learned Trial Court framed charges on 29.07.1999 under Section 364 and 386 of the IPC on the basis of material available on records, which were explained to accused persons including appellants/convicts, which they were “pleaded not guilty” and claimed trial.



6. To substantiate its case, the prosecution has examined altogether nine witnesses. They are:-

| P.W. No(s). | Name                               |
|-------------|------------------------------------|
| P.W. 1      | Mohan Mahto                        |
| P.W. 2      | Pramod Singh                       |
| P.W. 3      | Rameshwar Singh<br>(informant)     |
| P.W. 4      | Dina Nath Singh<br>(victim)        |
| P.W. 5      | Shiv Narayan Singh                 |
| P.W. 6      | Rakesh Kumar (son of<br>informant) |
| P.W. 7      | Lallan Singh (formal)              |
| P.W. 8      | Chandeshwar Prasad<br>Singh        |
| P.W. 9      | Manju Ram (I.O. of this<br>case)   |

7. Apart from the oral evidence, the prosecution has also proved the following documents as exhibits in order to prove the charges :-

| Exhibit No(s). | List of documents                                            |
|----------------|--------------------------------------------------------------|
| Exhibit 1      | Complaint      Petition<br>dated 02.04.1992                  |
| Exhibit 2      | Written Information of<br>Bheldi P.S. Case No. 39<br>of 1992 |
| Exhibit 3      | Original      Complaint                                      |



|           |                                                                                                              |
|-----------|--------------------------------------------------------------------------------------------------------------|
|           | Petition of C. Case No. 1993/92                                                                              |
| Exhibit 4 | F.I.R. of this case                                                                                          |
| Exhibit 5 | Certified Copy of judgment dated 19.12.1997 from the Court of learned Judicial Magistrate, Ist Class, Chapra |
| Exhibit 6 | Certified Copy of Deposition in Trial No. 639 of 1995                                                        |

8. The statement of the appellants/accused were recorded under Section 313 of the Code after stating them incriminating evidences/circumstances as surfaced during the trial, which they denied and shows their complete innocence.

9. To substantiate its case, the defence also examined two witnesses. They are:-

| D.W. No(s). | Name              |
|-------------|-------------------|
| D.W. 1      | Brahmdeo Mahato   |
| D.W. 2      | Raje Bhadai Singh |

10. Apart from the oral evidence, the defence has also proved the following documents as exhibits in order to defend the charges:-



| <b>Exhibit No(s).</b> | <b>List of documents</b>                                                 |
|-----------------------|--------------------------------------------------------------------------|
| Exhibit A             | Certified Copy of charge-sheet of Amnour Bheldi P.S. Case No. 44 of 1992 |
| Exhibit B             | Original Complaint petition of C. Case No. 308 of 1992                   |
| Exhibit C             | F.I.R. of Bheldi P.S. Case No. 44 of 1992                                |

**11.** After conclusion of the trial, the Trial Court convicted the appellants/accused for the offence punishable under Section 364 and 385 of the Indian Penal Code and accordingly ordered to undergo sentence for the period of five years and one year, respectively. Against which, the appellants/convicts have preferred this appeal.

**12.** Hence, the present appeal.

**13.** Learned counsel for the appellants/convicts submitted that present is a unique case in the sense that no FIR was lodged immediately after the occurrence rather a complaint case, (**Exhibit No. 3**) was filed on the next day before the learned Chief Judicial Magistrate, Chapra, which was subsequently withdrawn and thereafter four days later a written complaint was directly made to Superintendent of Police,



Chapra stating about the occurrence, which is the basis of present FIR. It is also submitted that a complaint case was lodged by father-in-law of the appellants/convicts, namely Bhadai Singh, exhibited as **Exhibit 'B'** (Original Complaint Petition of C. Case No. 308/92) under Dowry Prohibition Act, arraying victim, his son namely Anant Kumar and informant as an accused persons and just to counter the said case of Dowry Demand, due to non-fulfillment of which the marriage of grand daughter of father-in-law of appellants/convicts could not negotiated with son of victim, the present case was lodged. It is submitted that there are several material contradictions amongst deposition of witnesses stating about the occurrence during the course of trial. It is pointed out by learned counsel that out of the testimony of interested and inimical witnesses the present conviction took place, which is appearing bad in eyes of law. It is also pointed out by learned counsel that the depositions of victim, who examined as P.W. 4, namely Dina Nath Singh, several material contradictions, *qua*, occurrence surfaced during the trial. It is also pointed out by learned counsel that eye witnesses of this occurrence stated that victim was dragged about 30 yards but surprisingly there was no abrasion on the body of victim and he was also not examined medically after his



recovery. It is also pointed that the deposition of P.W. 4 as to escape from the captivity of accused persons, while they were sleeping is also appearing non-convincing on its face, rather same is appearing as a concocted story to secure conviction under allegation of kidnapping and demand of ransom. Learned counsel also submitted that no money of ransom as alleged was paid and same is also appearing from the testimony of prosecution witnesses, who were examined during the course of trial. While concluding the argument it is submitted that with available set of oral and documentary evidence and in the background of settled propositions of law it cannot be said that prosecution established its case beyond all the reasonable doubt, as prosecution witnesses are highly interested in view of litigating terms.

**15.** Learned APP while opposing the appeal submitted that victim and several eye-witnesses supported the occurrence of kidnapping and demand of ransom and as such there is no doubt regarding the occurrence. It is conceded by learned APP that there are certain discrepancies amongst testimony, which is natural and on the basis of those minor discrepancies it cannot be said that prosecution failed to



establish its case beyond reasonable doubt. In support of his submission learned APP relied upon the judgment of Hon'ble Supreme Court, as reported through **Bharwada Bhoginbhai Hirjibhai Vs. State of Gujrat**, reported as **AIR 1983 Supreme Court 753**.

16. Perused the records and also taken note of arguments as advanced by learned counsel appearing on behalf of the parties.

17. P.W. 1 Mohan Mahto & P.W. 2 Pramod Singh became hostile during the course of investigation, where nothing surfaced during their cross-examination as made by State, which may be used for the purpose of corroboration/contradiction, *qua*, the testimonies of other prosecution witnesses, who supported the occurrence.

18. P.W. 3 Rameshwar Singh, who is the informant of this case stated that occurrence took place on 01.04.1992 at about 5:00 PM, by that time of occurrence, he was sitting in his courtyard (*dalan*) alongwith Dina Nath Singh (P.W. 4/victim), Shambhu Singh (not examined), Jamadar Singh (not examined), Shiv Narayan Singh (P.W. 5), Roop Narayan Singh (not examined) and other persons. At that time appellants/convicts Awadhesh Singh & Bahadur Singh,



alongwith six unknown persons came on motorcycle. Awadhesh Singh & Bahadur Singh both appellants/convicts were equipped with pistol, whereas the unknown persons were equipped with gun and dagger. By coming there appellant/convict Awadhesh Singh asked from Dina Nath Singh (P.W. 4), regarding whereabouts of his son, namely Anant Kumar, where he replied that he is not available at home. On said reply accused/appellant Awadhesh Singh & Bahadur Singh, said them to take away Dina Nath Singh (P.W. 4) and on his direction all 8 persons carried away Dina Nath Singh/victim (P.W. 4) with them on motorcycle. When they tried to stop appellants/convicts, other co-accused persons pointed pistol towards them. It is further stated that appellants/convicts said that they will release Dina Nath Singh (P.W. 4) only after payment of Rs. 50,000/- and asked to come with said cash to *Kuria Bazar*. It is stated that on the next day 02.04.1992 he went to the Court of Chief Judicial Magistrate and lodged the case. He identified his signature over the complaint case, exhibited as **Exhibit No. 1** (Complaint Petition dated 02.04.1992), during the course of trial. It is further stated that on 04.04.1992 he sent written information of the occurrence to Superintendent of Police, Chapra, which was written by him only, where he identified his signature, which was exhibited as



**Exhibit No. 2** (Written Information of Bheldi P.S. Case No. 39 of 1992) during the course of trial. It was claimed by him that occurrence was witnessed by Akhilesh Kumar, Rakesh Kumar, Shambhu Singh, Shiv Narayan Singh, Jamadar Singh and other persons. It is further stated that after 12 to 13 days of kidnapping his brother Dina Nath Singh (victim/P.W. 4) rescued himself on his own from the hand of kidnappers. He stated that witness Pramod Singh examined as P.W. 2 and Mohan Mahto examined as P.W. 1, both are connected with appellants/convicts. It was further stated that Bhadai Singh, is father-in-law of both the appellants/convicts. It is further stated that Chandeshwar Prasad Singh (P.W. 8) and Bansi Devi were won over by appellants/convicts.

**18.1.** Upon cross-examination he stated that both appellants/convicts are relatives. It was stated that Bhadai Singh is the resident of Issopur village, which is *sasural* of appellants/convicts Awadhesh Singh. It is stated that Bhadai Singh, is father-in-law of appellants/convicts Awadhesh Singh. He denied about marriage negotiation between son of P.W. 4/victim, namely Anant Singh. It is stated by him that Bhadai Singh, lodged a complaint case against his nephew Anant Singh and brother Dina Nath Singh (P.W. 4) under Dowry Prohibition



Act, where they were acquitted. It is stated that said case was lodged to counter the present occurrence. He denied that said case was lodged prior to this occurrence. It was stated that he was complainant of the complaint case, which was filed before the Court of Chief Judicial Magistrate. It is stated that complaint was forwarded to *thana* but no action was taken and thereafter he made application to Superintendent of Police. It is stated that the fact as mentioned in the written information given to Superintendent of Police and also as stated in complaint petition, both are same. He denied that on the date of occurrence the function of ring ceremony was scheduled regarding engagement of son of P.W. 4/Dina Nath Singh. It was denied that marriage of Anant Singh was solemnized on the next date of occurrence. It is stated by him that his courtyard is the place of occurrence. It is stated that accused persons including appellants/convicts came to the place of occurrence on motorcycle, he failed to remember registration number of motorcycle. It is stated that they came with intention to kidnap, Anant Singh, but by that time as he was not available at home and when they could not find him they kidnapped his brother Dina Nath Singh. It is stated that accused persons including appellants/convicts dragged Dina Nath Singh (P.W. 4/victim)



and also started assaulting him by fist and legs. It is stated that no assault was caused by pistol. It is stated that appellants/convicts alongwith co-accused persons dragged Dina Nath Singh (P.W. 4/victim) by holding his hand. He was dragged upto 30 yards. He failed to notice any injury out of dragging. It was stated that at that time Dina Nath Singh was wearing *dhoti* and shirt. He also failed to disclose whether his clothes were torn during the occurrence or not. It was stated that he did not follow Dina Nath Singh (P.W. 4/victim) due to fear of pistol. He also failed to notice regarding oozing of blood from the body of Dina Nath Singh. It was stated that victim was forced to sit on the motorcycle in between, where pillion seat was occupied by appellant/convict, Awadhesh Singh, equipped with pistol. He denied that he did not disclose the name of witnesses in police station. It was stated by him that he disclosed before the police that it was said by both appellants/convicts, namely Awadhesh Singh and Bahadur Singh, as to kidnap Dina Nath Singh. It was stated that his victim brother works in Chapra Water Tank, whereas he works in Madhora Water Tank.

**19. P.W. 4 Dina Nath Singh**, who is victim himself and stated that on 01.04.1992 at about 5:00 PM, when he was



sitting at his courtyard (*dalan*), both above named appellants/convicts came over there and as they did not find his son Anant there, they kidnapped him. They also assaulted and dragged him up to motorcycle. It was stated that his brother Rameshwar Singh (P.W. 3), who is informant of the present case and Shiv Narayan Singh (P.W. 5), Shambhu Singh (not examined), Rakesh Kumar (P.W. 6) son of informant, Akhilesh Singh (not examined) made an attempt to rescue him but as appellants/convicts were equipped with pistol, gun and dagger they could not rescue him from them. It was stated that appellant/convict Awadhesh Singh asked his brother Rameshwar Singh (P.W. 3) to come with cash of Rs. 50,000/- at *Kuria Bazar*, only after that he would be released, otherwise they will kill him. It is said that on the way he met with one, Pramod Rai, and 2-3 unknown persons, who tried to rescue him but accused persons chased them. It is further deposed that he was confined in a room for 2-3 hours in *Kuria Bazar* and thereafter his eyes were covered by cloth and was taken to Issopur village, where he was kept for 4 days. Thereafter, again after covering his eyes he was taken towards bed (*diyara*) of *Gandak* River, where he was kept for 8 days. It is stated that appellant/convict Awadhesh Singh, said that, as his brother did not come with money,



therefore, obtained his signature and thumb impression on plain paper and they also snatched Rs. 200/- from him. It is stated that when in night all appellants/convicts were sleeping, by taking benefit of that he escaped. He said to met with his brother Rameshwar Singh (P.W. 3/informant) and narrated him regarding entire occurrence of kidnapping. He denied to fix the marriage of grand daughter of Bhadai Singh, with his son Anant Kumar. It is stated that marriage of his son Anant Kumar, was solemnized with grand daughter of Bedanti Lall. It is denied that on the date of occurrence there was any ring ceremony function of his son. It was stated that Bhadai Singh, lodged a complaint case against him, where he was acquitted. It was stated that he came to know about the said complaint case after 15 days of his kidnapping. He came back after 15 days of his kidnapping, to his village, where he met with his family members and explained them regarding events of the occurrence. It is further stated by him that after three (03) years of the present occurrence, marriage of his son was solemnized with the daughter of one Bedanti Lall Singh, and by that time the complaint case, which was lodged by Bhadai Singh, was pending in the Court. It is stated by him that accused persons came on four (4) motorcycles and they were altogether eight



persons. He failed to disclose the registration no.(s) of any motorcycle. It is stated that when accused persons including appellants/convicts came to his courtyard (*dalan*), by that time 7-8 persons were present there namely Rameshwar Singh (P.W. 3), Rakesh Singh, Rajbanshi Singh, Jamadar Singh and Shiv Narayan Singh. Motorcycles were parked on road. It was stated that appellants/convicts came with intention to kidnap, Anant Kumar Singh. It is also stated that prior to this occurrence appellants/convicts made an attempt to kidnap his son. It is stated that appellants/convicts are not in inimical terms with his son. It is also stated that appellants/convicts assaulted him by fists and legs and thereafter dragged him towards motorcycle, which was parked on road. It was stated that he was assaulted by appellants/convicts only. It is stated that after kidnapping he was not taken to the house of Bhadai Singh, in Issopur village. He did not claim to saw any shop in *Kuria Bazar*. He did not find any person roaming in *Kuria Bazar*. He did not even disclosed the name of the owner of the house, where he was kept in captivity for 2-3 hours, whereafter, he was taken to Isopur village. He was kept in Issopur village for (04) four days in a house situated at the outskirts of village, where he was usually guarded by a person, whenever he went to attend



nature's call in the nearby field. He did not shown the said house to the investigating officer of this case in Issopur village and thereafter was taken to bed (*diyara*) of the Gandak River, by appellant/convict, namely Awadhesh Singh & Bahadur Singh, where he was kept in a cottage. He also not shown the said cottage to the investigating officer. In said cottage his signature and thumb impression was forcefully obtained on the plain paper. On drawing attention he denied that he made statement before police that he was taken to the house of Bhadai Singh, at the Issopur village from, where he was released after (04) four days. He claimed to made statement before the police that appellants/convicts alongwith other co-accused persons were searching his son (Anant) but as they could not find him, they kidnapped him. He also claim to made statement before police that when unknown persons dragged him and assaulted, at that time Rameshwar Singh (P.W. 3), Shiv Narayan Singh (P.W. 5), Shambhu Singh (not examined), Rakesh Kumar (P.W. 6) and Akhilesh came over there and made an attempt to rescue him. He also stated as to made statement before police that accused/convict Awadhesh Singh, asked his brother Rameshwar Singh (P.W. 3) to bring cash of Rs. 50,000/- and only after that they would release him, otherwise will kill him. He also made



statement before police that accused/appellant covered his eyes after Kuria Bazar, while taking to Issopur village, where he was kept for (04) four days and thereafter by closing his eyes again he was taken to the bed of Gandak River, where he was kept for (08) eight days. It was stated that accused/appellant Awadhesh Singh, said that his brother did not come with money, therefore, obtained his signature and thumb impression on the plain paper, which they obtained forcefully. He also stated that after taking the signature appellants/convicts also took Rs. 200-300/- from his pocket. He denied suggestions that when he came to know that Bhadai Singh, will lodge a complaint case in connection with the dowry demand, he lodged the present false case against them.

**20. P.W. 5 Shiv Narayan Singh** is eye-witness of the occurrence and he supported the date and time of the occurrence stating that same is of 01.04.1992 at about 5:00 PM. He almost narrated the same fact regarding the occurrence in his examination-in-chief, as deposed earlier by P.W. 3 Rameshwar Singh & P.W. 4 Dina Nath Singh and same not required to be repeated.

**20.1.** On cross-examination, it was stated that informant of this case is his cousin father-in-law and denied to



have any knowledge that marriage of Anant Kumar, son of Dina Nath Singh (P.W. 4/victim) was to be solemnized with the grand daughter of Bhadai Singh. He stated to be present at his in-laws home (*sasural*) on the date of occurrence as a coincidence. He said to make same statement before police during investigation. It was stated by him that appellants/convicts dragged P.W. 4/victim, who was sitting there upto 25-30 yards. It was stated that appellant/convict Awadhesh Singh, was equipped with pistol. He failed to say whether any payment was made to secure the release of Dina Nath Singh/victim (P.W. 4). He returned back from his in-laws home on the next date of occurrence. He denied to depose falsely.

**21. P.W. 6 Rakesh Kumar, who is son of the informant** also stated that occurrence is of 01.04.1992, which took place at about 5:00 PM. He also stated same facts as said earlier by P.W. 3, P.W. 4 & P.W. 5 in their examination-in-chief. It was stated that at the time of occurrence his mother, aunt and children were also present in the house. He also failed to disclose the numbers of motorcycles and their registration number. He only claimed to identify two persons out of eight persons, who are appellants/convicts. It was stated by him that he did not saw accused/appellants, that when they came on



motorcycle and parked it in western side of his house. He failed to disclose, regarding whereabouts of Anant Kumar, at the time of occurrence. At the first instance he said that accused/appellants, came at place of occurrence on Rajdoot motorcycle but later on he disclosed that out of four, two were on black Rajdoot motorcycles and two were on red Bullet motorcycles. He also stated that no information was given to chowkidaar, *mukhiya/sarpanch* by any of his family members regarding occurrence.

**22. P.W. 7 Lallan Singh (formal witness)** who is an advocate clerk and assisted Rameshwar Singh/P.W. 3 in typing his complaint petition, which is exhibited as **Exhibit 1** (Complaint Petition dated 02.04.1992) during the course of trial. On cross-examination he stated that he is not aware about the occurrence.

**23. P.W. 8 Chandeshwar Prasad Singh (formal witness)**, who identified the signature of incharge officer Ram Ayodhya Singh, and on his identifications same was exhibited as **Exhibit 4** (F.I.R. of this case). On cross-examination he failed to disclose the present posting of Ram Ayodhya Singh.

**24. P.W. 9 Manju Ram (I.O. of this case)**, he inspected place of the occurrence and recorded the statement of



witnesses and submitted charge-sheet under Section 363/34 & 364/34 of the Indian Penal Code. On cross-examination he deposed that Bhadai Singh stated before him that marriage of his grand daughter was fixed with son of Dina Nath Singh, namely Anant Kumar Singh. It was stated by him that when Dina Nath Singh, changed his mind regarding marriage of his son, he asked his son-in-law Awadhesh Singh (appellant/convict) as to call for a *panchayti*. He stated that Dina Nath Singh (P.W. 4) never made statement before him that appellants/convicts came alongwith six (06) unknown persons on four motorcycles and started searching his son Anant Kumar Singh. He also said that P.W. 4, did not stated that Anant Kumar, was not present at that time in house. It was stated by him that Dina Nath Singh/P.W. 4 stated during the course of investigation to him that appellants/convicts alongwith 5-6 unknown persons came there and got hold of him and bring him at the residence of Bhadai Singh. It was stated that Dina Nath Singh/P.W. 4 did not disclosed about physical assault caused by appellants/convicts. He also stated that P.W. 4 did not disclose about any ransom demand of Rs. 50,000/- before him. He also denied as to be stated by Dina Nath Singh/P.W. 4 that Pramod Rai alongwith 2-3 persons met him on way and made an attempt



to rescue him. He also stated that Dina Nath Singh, did not made any statement that he was kept in *Kuria Bazar*, for 2-3 hours and thereafter, he was taken to Issopur village. He also stated that Dina Nath Singh, did not said anything about closing his eyes and was taken to Issopur village and further shifted to bed (*diyara*) of Gandak River, where he was kept in captivity for about eight (08) days. It was stated by witness Brahmdeo Mahato, that he saw Dina Nath Singh was returning to his home and case regarding his kidnapping is false. He denied to depose falsely.

**25.** From the discussion of aforesaid witnesses it transpires that alleged occurrence took place in the background of failed negotiations of marriage, which was in progress with son of P.W. 4, namely Dina Nath Singh, with the grand daughter of Badhai Singh, who is father-in-law of the appellant/convict Awadhesh Singh. It is admitted positions by P.W. 3 & P.W. 4 that a case regarding dowry demand was registered by Badhai Singh, father-in-law of Awadhesh Singh (appellant/convict) against P.W. 3 & P.W. 4 and other family members, where they have been acquitted. This is an admitted position and as such no further corroboration is required on this point. The depositions of eye-witnesses are also contradictory on the point of rescuing



P.W. 4/victim, while he was kidnapped by appellants/convicts alongwith other co-accused persons. The parking place of all four (04) motorcycles is also appearing different as per depositions of P.W. 3, P.W. 4, *qua*, P.W. 6. In terms of depositions of P.W. 4 it appears that when appellants/convicts came to his courtyard (*veranda*), P.W. 6 was also present there, but P.W. 6 deposed in his cross-examination that he failed to notice that from, which side and when appellants/convicts came over there. It is highly surprising that all eight (08) persons on four (04) different motorcycles came to the house and were noticed differently by eye-witnesses of the occurrence, creating a, *prima facie*, doubt regarding occurrence.

26. From the depositions of P.W. 4, it appears that he remained in Issopur village in an isolated house situated at the outskirts for four days, where he was guarded by persons even while going to attend nature's call. It is nowhere appearing from his testimony that said persons were equipped with any arms, as to stop him from escaping, but the manner, which was explained by him as to run away from the clutches of kidnappers from the cottage located in the bed of Gandak River is also not appearing convincing on its face as for the simple reason that at that point of time he was guarded by 6-7 persons.



27. P.W. 9, who is I.O. of this case clearly stated during the course of trial that P.W. 4 stated before him that appellant/convict Awadhesh Singh, came to his courtyard (*veranda*) alongwith 5-6 unknown persons and took him for Badhai Singh and denied all his testimony as stated before him during the investigation. In the background of same, the credibility of depositions of victim/P.W. 4 also appears doubtful, being improved version, first time during the trial.

28. P.W. 7 the advocate clerk, who identified the complaint, exhibited as **Exhibit 3** (Original Complaint Petition of C. Case No. 1993/92) regarding occurrence authored by P.W. 3/informant before giving information to Superintendent of Police, as in the present case no formal information was lodged with local SHO. From the perusal of **Exhibit 1** (Complaint Petition dated 02.04.1992) and written information as given to Superintendent of Police, Chapra, exhibited as **Exhibit 4** (FIR of this case) it appears that same was filed after four days of the occurrence. From **Exhibit 3** (Original Complaint Petition of C. Case No. 1993/92), where Bhadai Singh, father-in-law of Awadhesh Singh (appellant/convict) made victim/P.W. 4 Dina Nath Singh, P.W. 3 Rameshwar Singh and Anant Kumar Singh son of P.W. 4, accused persons and said Complaint Case was



lodged under Section 3/4 of the Dowry Prohibition Act. These facts are sufficient to constitute that parties were under inimical terms, where all prosecution witnesses starting from P.W. 3 to P.W. 6 are close relatives and as such their testimony required to be viewed strictly being interested witnesses.

29. It would be apposite at this stage to reproduce the legal reports of Hon'ble Supreme Court as reported in the matters of:-

(a) **Dalip Singh Vs. State of Punjab**, as reported in **AIR 1953 SC 364**, the Supreme Court in paragraph- 26 observed thus:

“26. A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalisation. Each case must be judged on its own facts. Our observations are only made to combat



what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts.”

(b) **Masalti Vs. State of U.P.**, as reported in **AIR 1965 SC 202** following are the observations of the Supreme Court in paragraph-14:

“14. .... There is no doubt that when a criminal court has to appreciate evidence given by witnesses who are partisan or interested, it has to be very careful in weighing such evidence. Whether or not there are discrepancies in the evidence; whether or not the evidence strikes the court as genuine; whether or not the story disclosed by the evidence is probable, are all matters which must be taken into account. But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses. Often enough, where factions prevail in villages and murders are committed as a result of enmity between such factions, criminal courts have to deal with evidence of a partisan type. The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice. No hard-and-fast rule can be laid



down as to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct.”

(c) **Namdeo Vs. State of Maharashtra**, as reported in (2007) 14 SCC 150, the following are the observations of the Supreme Court in paragraph-38:

“38. ... it is clear that a close relative cannot be characterised as an “interested” witness. He is a “natural” witness. His evidence, however, must be scrutinised carefully. If on such scrutiny, his evidence is found to be intrinsically reliable, inherently probable and wholly trustworthy, conviction can be based on the “sole” testimony of such witness. Close relationship of witness with the deceased or victim is no ground to reject his evidence. On the contrary, close relative of the deceased would normally be most reluctant to spare the real culprit and falsely implicate an innocent one.”

30. From the depositions of I.O. it also appears that he did not visited the house of *Kuria Bazar*, Issopur village and cottage at the bed of Gandak river, where altogether for 12 long days victim/P.W. 4 was kept in captivity after kidnapping. These places of occurrence were not established during the course of trial. There is no medical examination/injury report of the P.W. 4



in the background of allegation that he was assaulted by appellants/convicts. It is further important to notice that P.W. 4/victim stated that while he was kidnapped, on the way Pramod alongwith 2-3 unknown persons met him and they tried to rescue him but were chased by appellants/convicts and co-accused persons, but said Pramod turned hostile during the course of examination as P.W. 2.

**31.** It also appears that no ransom money was paid and moreover, the plain papers on which signature of P.W. 4/victim was obtained nowhere found misused. In view of aforesaid background and available evidence it can be said that victim and other eye-witness are in inimical terms/interested witnesses due to pending criminal litigations lodged to counter dowry demand case. Accordingly, this Court is satisfied that appellants/convicts must be acquitted of all the charges framed against them by giving them benefit of doubt.

**32.** Accordingly, the appeal stands allowed.

**33.** The impugned judgment of conviction dated 29.09.2023 and order of sentence dated 30.09.2023 passed by learned Additional District and Sessions Judge, Fast Track Court No. III, Saran at Chapra in Sessions Trial No. 424 of 1993 is quashed and set aside.



34. The appellants, above-named, are therefore acquitted of the charges levelled against them. Since the appellants are on bail, they have been discharged from the liabilities of their bail bonds. Sureties are also stands discharged from their respective liabilities.

35. Office is directed to send back the lower court records along with a copy of the judgment to the court below.

(Chandra Shekhar Jha, J.)

S.Tripathi/-

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