

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.562 of 2019

Arising Out of PS. Case No.-179 Year-1996 Thana- NASRIGANJ District- Rohtas

Anil Tiwari, Son of Hardeo Tiwari Resident of Ward No.-3, Biseni Kala,
Bisunpur, Police Station- Rajpur, Distict- Rohtas at Sasaram.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 498 of 2019

Arising Out of PS. Case No.-179 Year-1996 Thana- NASRIGANJ District- Rohtas

Dadan Dusadh @ Dadan Paswan S/o Late Dudh Nath Dusadh R/o village-
Baligaon, P.S.- Rajpur, District- Rohtas

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 540 of 2019

Arising Out of PS. Case No.-179 Year-1996 Thana- NASRIGANJ District- Rohtas

Kapil Singh Yadav Son of Late Mohan Singh Resident of Village- Husenabad,
P.S.- Rajpur, District- Rohtas.



... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 707 of 2019

Arising Out of PS. Case No.-179 Year-1996 Thana- NASRIGANJ District- Rohtas

Hari Kahar @ Hari Ram S/o Late Moti Kahar R/o village- Barna, P.S.-
Rajpur, District- Rohtas at Sasaram

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 729 of 2019

Arising Out of PS. Case No.-179 Year-1996 Thana- NASRIGANJ District- Rohtas

BABAN KAHAR Son of Moti Kahar Resident of Village - Dhobdiha, P.S.-
Nasariganj, Dist.- Rohtas at Sasaram.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :



(In CRIMINAL APPEAL (DB) No. 562 of 2019)

For the Appellant/s : Mr. Vindhya Keshri Kumar, Sr. Advocate
Mr. Dhaneshwar Gupta, Advocate

For the Respondent/s : Mr. Abhimanyu Sharma, A.P.P.

(In CRIMINAL APPEAL (DB) No. 498 of 2019)

For the Appellant/s : Mr. Shailendra Kumar Singh, Advocate
Mr. Ajay Kumar Tiwari, Advocate

For the Respondent/s : Mr. Abhimanyu Sharma, A.P.P.

(In CRIMINAL APPEAL (DB) No. 540 of 2019)

For the Appellant/s : Mr. Ram Chandra Singh, Advocate
Mr. Shankar Kumar, Advocate

For the Respondent/s : Mr. Sujit Kumar Singh, A.P.P.

(In CRIMINAL APPEAL (DB) No. 707 of 2019)

For the Appellant/s : Mr. Aditya Narayan Singh-1, Advocate

For the Respondent/s : Mr. Abhimanyu Sharma, A.P.P.

(In CRIMINAL APPEAL (DB) No. 729 of 2019)

For the Appellant/s : Mr. Aditya Narayan Singh-1, Advocate

For the Respondent/s : Mr. Abhimanyu Sharma, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 03-08-2023

All these appeals have been taken up together and are being disposed of by this common judgment.

2. Heard Mr. Vindhya Keshri Kumar, learned Senior Advocate, Mr. Shailendra Kumar Singh, Mr. Ram



Chandra Singh and Mr. Aditya Narayan Singh-1 for the appellants and Mr. Abhimanyu Sharma and Mr. Sujit Kumar Singh, learned A.P.Ps. for the State.

3. All these appeals are directed against the judgment of conviction and order of sentence both dated 02.04.2019 passed by the learned Fast Track Court-II, Civil Court, Sasaram, Rohtas in Sessions Trial No. 331 of 2001, arising out of Nasriganj P.S. Case No. 179 of 1996, whereby all the appellants have been convicted under Section 364A/34 of the I.P.C. and have been sentenced to undergo rigorous imprisonment for life.

4. It is a peculiar case where the victim, who has been examined as P.W. 3, returned only a day after he is stated to have been abducted.

5. Three persons have deposed against the appellants. The F.I.R. has been lodged by the father of the victim, who has not been examined at the trial.

6. Nonetheless, in order to appreciate the



story propounded by the prosecution, we have found that the father of the victim was informed that his son has been kidnapped while he along with his associates had gone to the river side for fishing. On such information, he along with two others, none of whom have been examined at the trial, went in search of his son, but on way was informed by somebody else, who too has not been examined, that, perhaps, the appellants have taken away the victim. The purpose of abduction was not known to the informant. Later, on the basis of the names provided in the F.I.R., investigation proceeded and all the appellants were charge-sheeted.

7. All of them were put on trial.

8. The Trial Court, after having examined only three witnesses on behalf of the prosecution, convicted the appellants as aforesaid.

9. As noted above, P.Ws. 1 and 2, namely, Ashok Singh and Banke Bihari Tiwary, have not stated anything against the appellants. They do not claim to



have seen the occurrence. They are said to have been informed by unknown persons in the village that, perhaps, the appellants had abducted the victim.

10. The victim, as we have noted, came back only a day after.

11. The victim, who has been examined as P.W. 3, has a very interesting story to narrate. He has, during the course of trial, stated that he was abducted, when he along with his nephew and others had fallen asleep beneath a bridge near the water body where they had gone fishing. His nephew was assaulted by one of the miscreants who was carrying a gun with him. The nephew of P.W. 3 has not been examined at the trial nor any explanation has been offered for his non-examination. The victim claims to have been blind-folded and taken to some distance where he was kept in a room. He was also offered food in the night and in the morning thereafter which he did not eat. Later, when he removed the blinders from his eyes, he saw two of the



miscreants sleeping. He did not identify any one of them, but could notice that one of them was keeping a fire-arm by his side. He valiantly took the fire-arm and opened the door of the room in which he was confined and somehow reached Barun village. When he met the villagers of Barun, he disclosed that he had been kidnapped and with their help, he reached his village home.

12. The story narrated by P.W. 3 does not appear to be acceptable at all for the reason that he does not name any one of the appellants. He has come up with two or three reasons for his abduction, none of which could be proved by the prosecution. He was ostensibly told by one of his kidnappers that because he has Rs. 12 to 13 Lakhs stashed in his bank, therefore, he has been kidnapped. This statement was made by him under Section 164 Cr.P.C. He further states that the weapon of the miscreants which he had taken along with him was not taken by the police officer, who actually



advised him not to do so for the reason that otherwise he may be made an accused in a criminal case involving fire-arms. Apart from this, he has stated before the Trial Court that there was some *Panchayati* some times ago in the village where a P.D.S. dealer had threatened him that he would be kidnapped within fifteen days and, ultimately, he was kidnapped.

13. The entire story line is redolent with doubt and suspicion.

14. Nobody has seen the occurrence. The P.Ws. 1 and 2 were a little surprised when questioned as to why the father and the son (P.W. 3) were behind the appellants who were neither seen by anyone of the witnesses nor any person who could have really thrown light on the prosecution version, were examined at the trial.

15. The story narrated by the father of the victim as also the victim therefore does not inspire confidence.



16. We also find that prosecution has not bothered to examine either the informant or the I.O. of this case.

17. For these reasons, we set aside the judgment of conviction and order of sentence dated 02.04.2019, passed by Mr. Ravindra Mani Tripathi, the learned Fast Track Court-II, Civil Court, Sasaram, Rohtas in Sessions Trial No. 331 of 2001, arising out of Nasriganj P.S. Case No. 179 of 1996, and acquit the appellants of the charges levelled against them.

18. All these appeals stand allowed.

19. The appellants, viz., Anil Tiwari [Cr. Appeal (DB) No. 562 of 2019], Dadan Dusadh @ Dadan Paswan [Cr. Appeal (DB) No. 498 of 2019] and Kapil Singh Yadav [Cr. Appeal (DB) No. 540 of 2019] are in custody. They are directed to be set at liberty forthwith unless their detention is required in any other case.

20. The appellants, viz., Hari Kahar @ Hari



Ram [Cr. Appeal (DB) No. 707 of 2019] and Baban Kahar [Cr. Appeal (DB) No. 729 of 2019] are on bail. Their liabilities under the bail-bonds are cancelled.

21. Let a copy of this judgment be dispatched to the Superintendent of the concerned Jail forthwith for compliance and record.

22. The records of these appeals be returned to the Trial Court forthwith.

23. Interlocutory application/s, if any, also stand disposed off accordingly.

(Ashutosh Kumar, J)

(Vipul M. Pancholi, J)

K.C.Jha/Praveen

AFR/NAFR	NAFR
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