

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.328 of 2013**

Arising Out of PS. Case No.-13 Year-2008 Thana- CIVIL LINE District- Gaya

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1. Jitendra Yadav and Ors. S/O Naresh Yadav Resident Of Mohalla- Maranpur, P.O.- Chand Chaura, P.S.- Civil Line, District- Gaya.
 2. Naresh Yadav S/O Mathura Yadav Resident Of Mohalla- Maranpur, P.O.- Chand Chaura, P.S.- Civil Line, District- Gaya.
 3. Sikandar Yadav S/O Kauleshwar Yadav Resident Of Mohalla- Sonu Bigha, P.S.- Bodh Gaya, District- Gaya.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Dharmendra Kumar Sinha, Advocate
For the State	:	Mr. Bipin Kumar, APP

**CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
CAV JUDGMENT**

Date : 25.04.2024

Heard Mr. Dharmendra Kumar Sinha, learned counsel for the appellants and Mr. Bipin Kumar, learned APP appearing on behalf of the State.

2. The present appeal has been directed against the judgment of conviction dated 03.04.2013 passed by the learned ad-hoc A.D.J.-III Gaya in Session Trial No. 194 of 2009+ 192/2009/ 519/2008 + 436/2009 arising out of Civil Lines P.S. Case No. 164 of 2007 by which the appellants have been convicted for the offences under Section 323 of the Indian Penal Code and directed to undergo simple imprisonment for nine months each.



3. According to the prosecution case which was registered on the basis of written report given by informant Sheela Pandey to officer in charge of police station Civil Line, Gaya alleging inter alia that she had instituted Civil Line P.S. Case No. 164/07 against one Naresh Yadav and others for forgery and in the said case Naresh Yadav (Appellant No. 2) was put in to judicial custody and after release from jail he along with his son were pressuring the informant to withdraw the case and enter into compromise and on 29.01.2008 at about 3 P.M. when she her son Rajnish and Awanish were inside the house and one Binay Kumar son of Dinanath Pandey had also come at the house then at that time all Appellant came to her house by searching her son to enter into compromise and then on the point of time Binay Kumar who had came to her house, came out from the house and tried to stop them but all the three Appellants assaulted them and taken away from the house with an impression that the case will be compromised Automatically. The informant and her son had communicated this matter to commissioner, the collector and on such information police force came and on being search at the house of Appellant No. 2 (Naresh Yadav) one Binay Kumar was recovered. It has further been alleged that all three Appellants after abusing with him had intention to kill. On the basis of above said information F.I.R. was lodged U/s 341, 323, 447, 504,



364, 368 I.P.C.

4. Learned counsel for the appellants submits that after investigation charge-sheet was submitted against the appellant nos. 1 and 2 and vide order dated 17.05.2008 cognizance was taken against them by the in-charge Chief Judicial Magistrate, Gaya and investigation against appellant no.3 was kept pending and his record was ordered to be split but again supplementary charge-sheet was submitted against appellant no.3 and cognizance was taken against him on 04.03.2009. Learned counsel for the appellants submits that the case was committed against appellant nos.1 & 2 on 30.07.2008 and appellant no. 3 on 20.05.2009. The charges were framed against appellant nos. 1 & 2 on 10.02.2009 in the separate session record and charge against appellant no.3 was framed on 08.10.2009. As both the recorded were on same position. Therefore, both were amalgamated by order dated 31.03.2011. Learned counsel for the appellants submits that the prosecution has examined three witnesses Awanish Kumar (PW-1), Smt. Sheela Pandey (PW-2) and Neela Devi (PW-3) among which PW-3 (Neela Devi) was declared as hostile and in the present case the I.O. was not examined and even the victim was also not examined. The statement recorded by the informant and her son was contradictory to each other. He further submits that the case



of the appellants was put forth for trial and the learned Court of Ad-hoc A.D.J.- III, Gaya has come out of conclusion that intentional kidnapping is not established and on the basis of material on record discussion made the Court come out of the opinion that case under Sections 364/34 and 368 of the Indian Penal Code has not been established, therefore, all appellants were acquitted under Section 364/34 and 368 of the Indian Penal Code but they were found guilty under Section 323 of the Indian Penal Code and directed to undergo for simple imprisonment for nine months each under Section 323 of the Indian Penal Code. Learned counsel for the appellants submits that there is vital discrepancy in the testimony of the prosecution witnesses and PW-3 was declared as hostile and the learned Court below has not established the case under Section 364/34 and 368 of the Indian Penal Code and in the present case the Investigating Officer as well as the victim have not been examined.

5. I find substance in the submission made on behalf of the appellants that non-examination of the Investigating Officer in the present case seriously prejudice the case of the appellants. Further non-examination of the victim is also a serious lacunae in prosecution case, inasmuch as, the appellants missed the opportunity to cross-examination of Investigating Officer as well as victim.



6. This Court is of the considered view that the prosecution has failed to establish the charges against these appellants of the offences punishable under Section 323 of the Indian Penal Code. Inconsistencies in the evidence of the prosecution's witness. None-examination of Investigating Officer and victim to prove the case of prosecution.

7. Resultantly, the appellants stand acquitted of the charges of commission of offence punishable under Section 323 of the Indian Penal Code.

8. Accordingly, the impugned judgment of conviction dated 03.04.2013 and order of sentence dated 03.04.2013 passed by the learned Ad-hoc A.D.J. III, Gaya in Session Trial No. 194 of 2009 + 192/ 2009/519/2008 + 436/2009 arising out of Civil Line P.S. Case No. 164 of 2007, are hereby set aside.

9. The appeal is allowed.

(Rajesh Kumar Verma, J)

ajay/-

AFR/NAFR	NAFR
CAV DATE	15.03.2024
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