

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.171 of 2006**

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1. Ashok Yadav son of Kail Yadav
2. Suresh Yadav, son of Late Sanichu Yadav
3. Mahesh Yadav son of Srichand Yadav

All are residents of Village-Dariapur, P.S.-Tekari, District-Gaya

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Vipul Sinha, Amicus Curiae
For the Respondent/s : Mr. Abhay Kumar, APP.

**CORAM: HONOURABLE MR. JUSTICE SUNIL KUMAR PANWAR
ORAL JUDGMENT**

Date : 13-03-2024

Heard Mr. Vipul Sinha, learned *Amicus Curiae*
and Mr. Abhay Kumar, learned A.P.P for the State.

2. The present appeal has been filed against the judgment of conviction dated 28.01.2006 and order of sentence dated 30.01.2006 passed by learned Additional District & Sessions Judge, F.T.C-III, Gaya in connection with Sessions Trial No. 12 of 2006, arising out of Tekari P.S. Case No. 45 of 2001, whereby and whereunder the appellants were found guilty and convicted for the offences punishable under Sections



364/34, 452, 380 of the Indian Penal Code and Section 27 of the Arms Act and they were sentenced to undergo rigorous imprisonment for a period of ten years under Section 364 I.P.C and further for a period of five years for the offence under Section 380 I.P.C as also for a period of five years under Section 452 of the Indian Penal Code. The appellants were also sentenced to undergo rigorous imprisonment for five years for the offence punishable under Section 27 of the Arms Act. All the sentences were directed to run concurrently.

3. The prosecution case as per the F.I.R is that on 23/24-03-2001 while the informant was sleeping with her husband in her room, at about 12:30 A.M, she wake up hearing some moment in the courtyard. It is alleged that some miscreants forcefully entered into the room of the informant and caught hold her husband namely Binay Yadav. In the deem-light, her mother-in-law identified all the F.I.R named accused persons including the appellants. The accused persons thereafter



robbed the silver and gold jewellery and also kidnapped the husband of the informant and took him with them on the pistol point.

4. On the basis of the aforesaid fardbeyan of the informant, Tekari P.S. Case No. 45 of 2001 was registered against the accused persons including the appellants and after completion of the investigation, charge-sheet was submitted under Sections 380, 452 of the Indian Penal Code and Section 27 of the Arms Act and thereafter cognizance was taken under the aforesaid Sections and the case was committed to the Court of Sessions for trial.

5. During the course of trial, altogether eight witnesses were examined on behalf of the prosecution.

6. P.W. 1 Satyendra Kumar, P.W. 2 Peyari Devi , P.W 4 Asha Kumari and P.W. 5 Lalita Devi are the family members of the victim and are highly interested witnesses. They have narrated the same incidence as narrated by the informant in her fardbeyan that



miscreants have entered into the house and on the point of pistol, they robbed the gold and silver ornaments, cash and also kidnapped husband of the informant. All the above prosecution witnesses have identified the miscreants including the appellants in the deem-light. Though there is contradiction between the prosecution witnesses with regard to number of the miscreants as P.W. 1 has stated that miscreants were 15-20 in numbers whereas P.W. 2 told that 20 miscreants entered into the house whereas P.W. 4 has stated that 25-30 miscreants entered into the house. All the above prosecution witnesses are family members of the informant and are highly interested witnesses.

7. P.W. 3 Rajmani Devi is the informant and wife of the victim Binay Yadav who has stated in her examination-in-chief that the accused entered into her room after putting pressure on the door. The accused had covered their faces with *Gamchi*. The accused persons forcefully kidnapped her husband. The informant



and other family members made several requests to release the victim but their requests went in vein. The accused persons also robbed the gold and silver ornaments, cash from the house of the informant. She further stated that her husband is still traceless. The informant identified all the F.I.R named accused persons including the appellants.

8. P.W. 6 Sheo Bhajjan Yadav had gone with the informant to the police station and signed on the *fardbeyan*.

9. P.W. 7 Jamuna Yadav is the co-villager who has stated in his fardbeyan that on hearing gunshot firing, he went to the house of the informant and saw that household articles were thrown everywhere. The informant told him that 10-11 miscreants have kidnapped her husband Binay Yadav. The informant told the name of the accused who had kidnapped her husband.

10. Mr. Vipul Sinha, learned *Amicus Curiae*, in



defence of the appellants has submitted that both sides are agnates and there is a land dispute between the parties. There is contradiction between the evidence of the prosecution witnesses as the prosecution witnesses have differ opinion with regard to number of the miscreants. There is no independent eye witness to the occurrence and most of the prosecution witnesses are closely related to the informant and are highly interested witnesses. During the course of investigation, not a single witness has come forward to claim himself to be the eye witness to the occurrence. Although P.W. 7 Jamuna Yadav claims to go to the house of the informant after hearing gunshot firing, but this witness also does not claim to have seen accused persons taking away the husband of the informant with them. Though this witness told in his examination-in-chief that the informant herself had narrated the incidence and took the name of the miscreants including the appellants. It is further submitted that there is long standing dispute



between the parties and all the prosecution witnesses are closely related to each other and are highly interested witnesses.

11. I have gone through the entire case records, oral and documentary evidence adduced on behalf of the prosecution during trial and considering the submissions raised on behalf of the learned *Amicus Curiae* as well as learned A.P.P and finds that both sides are agnates and there is a long standing land dispute between the parties. There is contradiction in the evidence of the prosecution witnesses with regard to the number of miscreants. There is no independent eye witness to the occurrence and most of the prosecution witnesses are closely related to each other and are highly interested witnesses. In this case, the Investigating Officer has also not been examined by the prosecution. The factum of non-examination of the Investigating Officer by the prosecution goes to show that the prosecution has not come up before the Court



with clean hands. Whatever have been stated by the witnesses in their examination-in-chief was not contradicted in absence of evidence of Investigating Officer. The right of bringing on record the contradictions in the statement of witnesses made before the Investigating Officer is a very valuable right of the accused and by showing that, the witness has made improvements or has given evidence, which contradicts his earlier statement, the accused is able to satisfy the Court that the witness is not reliable witness. In my view, the Investigating Officer is a material witness and non-examination of the Investigating Officer has definitely prejudiced the appellants since the appellants lost opportunity to cross-examine the Investigating Officer on point of seized materials, visit by the Investigating Officer at the place of occurrence and contradictions in the statement of prosecution witnesses before the Investigating Officer. Hence, the prosecution has failed to establish its case beyond the shadow of all



reasonable doubts and the appellants are entitled to get the benefits of doubt.

12. In that view of the matter, judgment of conviction dated 28.01.2006 and order of sentence dated 30.01.2006 passed by learned Additional District & Sessions Judge, F.T.C-III, Gaya in connection with Sessions Trial No. 12 of 2006, arising out of Tekari P.S. Case No. 45 of 2001 are set aside.

13. The appellants are acquitted of all the charges after giving the benefits of doubt.

14. The appellants are all along on bail. They are discharged from the liabilities of the bail bonds.

15. This Court expresses the appreciation for the efforts taken by Mr. Vipul Sinha, learned *Amicus Curiae* who had insisted for assisting the Court in the matter. This Court directs the Patna High Court Legal Services Committee to pay to Mr. Vipul Sinha a sum of Rs. 6000/-(Six Thousands) towards his professional fee for extending valuable assistance to this Court in



deciding this appeal.

16. Accordingly, the appeal stands allowed.

Shageer/-

(Sunil Kumar Panwar, J)

AFR/NAFR	NAFR
CAV DATE	N/A
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