

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.3025 of 2022**

Arising Out of PS. Case No.-19 Year-2003 Thana- BARH District- Patna

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Bhimal Yadav, S/o Late Ramjot Yadav, Resident of Village- Soima, P.S.-
Barh, District- Patna.

... .. Appellant/s

Versus

The State of Bihar.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Manoj Kumar Pandey, Advocate
		Ms. Kumari Pallavi, Advocate
For the Respondent/s	:	Mr. Syed Ashfaque Ahmad, APP

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

Date : 22-10-2024

The present appeal preferred by appellant/convict, namely, Bhimal Yadav against judgment of conviction dated 20.05.2022 and the impugned order of sentence dated 03.06.2022 passed by the learned A.D.J.-V, Barh (Patna), in Sessions Trial No. 554/2006, arising out of Barh P.S. Case No. 19/2003 whereby and whereunder the appellant/convict has been convicted for the offence under Section 364/34 of the Indian Penal Code and sentenced him to undergo R.I. for ten years and fine of Rs. 50,000/- (Rupees fifty



thousand only) and in default of payment of fine, he shall further undergo one year of additional simple imprisonment.

2. The crux of prosecution, as it appears from the written information of the informant/PW-4, namely, Rampriya Sao that on 13.01.2003 at about 2.30 P.M. he along with his father namely Bijo Sao were cultivating his land in Tal. In the meantime, his co-villager, namely Bhimal Yadav (appellant) armed with gun riding on horse along with one Balindra Yadav and two unknown persons who having also armed with gun have arrived and intercepted his father on the point of weapon, assaulted him and abducted his father and fled away towards east. Thereafter he raised alarm and returned his village and started searching his father along with his co-villagers but could not trace him, then he informed to the police and gave written information *qua* occurrence.

3. With aforesaid written information of PW-4/informant, Barh P.S. Case No. 19/2003 was lodged



for the offences under Section 364/34 of the Indian Penal Code.

4. After investigation, police submitted charge sheet no. 07/2005 on 19.01.2005 against four accused persons including the appellant.

5. Learned jurisdictional Magistrate took cognizance and after compliance of Section 207 of the Cr.P.C., committed this case for trial to the court of Session.

6. To established its case before the learned trial court, the prosecution altogether examined total of six witnesses, namely, **PW-1** Bijo Sao (victim), **PW-2** Binod Kumar Shukla, **PW-3** Asharfi Devi, **PW-4** Rampriya Sao (Informant), **PW-5** Kapildeo Yadav, **PW-6** Mahendra Sao.

7. The prosecution also exhibited following documents during the trial to substantiate its case which are as:-

Exhibit-1 Statement of victim under



Section 164 Cr.P.C.

Exhibit-2 Signature of the informant
on written report.

8. On the basis of evidences, as surfaced during the trial, the appellant/convict was examined under Section 313 of the Cr.P.C., where he denied all the evidences as surfaced against him during trial and claimed his complete innocence and false implication.

9. One defence witness was examined on behalf of accused/appellant during the trial.

10. The defence also exhibited document during the trial to substantiate its case which is **Exhibit-A.**

11. On the basis of aforesaid evidences, learned trial court convicted the appellant and passed order of sentence, as aforesaid, being aggrieved with, appellant/convict preferred the present appeal.

12. Hence the present appeal.

13. Learned counsel appearing on behalf of the appellant/convict submitted that both appellant and



victim of crime in question, who examined during trial as PW-1 are co-villager and known to each other and by relation of village, the appellant was grandson of the victim. It is submitted that nothing appears out of testimony of victim/PW-1, which may suggest that kidnapping of PW-1 was done in order to commit his murder or may be so disposed of as to be put in danger of being murder, which is the basic legal ingredients as to established the case for the offence under Section 364 of the Indian Penal Code, rather it appears from the deposition of victim that appellant helped him during the alleged occurrence of kidnapping and asked other co-accused persons as not to assault him and leave him.

14. It is further submitted by learned counsel that informant of this case is hearsay witness, who is none but the son of the victim turned hostile during the trial. Learned counsel also submitted that investigating officer of this case was not examined during the trial as to ascertain the fact as explained by victim that he was



rescued by the police. Non-examination of investigating officer deprived appellant during trial to contradict several major contradictions as surfaced during the trial as deposed by PW-1/victim. While concluding argument, learned counsel relied upon the legal report of Hon'ble Supreme Court as available through ***Sukhjit Singh Vs. State of Punjab*** reported as ***(2014) 10 SCC 270.***

15. In view of aforesaid, it is submitted that balance of appeal is in favour of appellant and, therefore, same is fit to be quashed and set aside.

16. Learned APP Mr. Syed Ashfaque Ahmad while opposing the appeal submitted that the victim supported the occurrence through his statement as recorded under Section 164 of Cr.P.C., which was exhibited during the trial as **Exhibit-1**, where the involvement of appellant was specifically alleged alongwith other co-accused persons. It is submitted that the said statement was duly proved during trial by the learned Judicial Magistrate, who recorded the statement



of victim and examined during trial as PW-2. It is submitted that from the testimony of PW-1/victim, it appears that the appellant was also involved in his kidnapping and, therefore, there is no occasion to interfere with judgment of conviction as recorded by the learned trial court.

17. I have perused the trial court records carefully and gone through the evidences available on record and also considered the rival submissions as canvassed by the learned counsel appearing on behalf of the parties.

18. As to re-appreciate the evidence, while disposing the present appeal, it is apposite to discuss the evidences available on record, which are as under:-

19. It appears from the perusal of record and out of submission that the most important witness of present occurrence is PW-1, who is Bijo Sao and victim of crime in question. It appears from his deposition that the occurrence took place somewhere before 13 years at



about 3:00 PM. It also appears from his examination-in-chief itself that the appellant said during course of kidnapping to other accused persons that not to assault him and also to leave him. Upon which, he was not assaulted by other accused persons. It also appears from his cross-examination that the appellant was his co-villager and related to him as grandson. It also appears that he raised suspicion that appellant might be involved in his kidnapping. He categorically deposed that he did not pay any amount to kidnappers. The ransom money was asked by Birendra Yadav. He also stated that he made statement to police that appellant saved him from physical assault. He also stated that police never made any enquiry in this case from him. Enquiry was also not made from his family members or with any co-villagers.

20. From the deposition of PW-2, who is a Judicial Magistrate, namely Binod Kumar Shukla that the victim named appellant while recording his statement under Section 164 of the Cr.P.C. as to involved in



kidnapping. PW-3 is the wife of victim/PW-1, who appears hearsay witness and PW-4 is the son of victim/PW-1, who identified his signature on written information, which upon his identification exhibited as **Exhibit No. 2** but he did not supported any allegation as raised through his written information. He simply deposed in examination-in-chief that he came to know from his mother/PW-3 that his father was kidnapped. He did not named appellant. He was turned hostile. Upon cross-examination by the learned counsel appearing for the appellant, he was categorically stated that he did not came to know that who were involved in kidnapping of his father. He was examined on 20.09.2018. PW-5 and PW-6, who are Kapildeo Yadav and Mahendra Sao deposed during trial that they don't know anything about crime in question. Both of them declared hostile, where nothing surfaced out of their cross-examination by the State, which may appears relevant as to corroborate or contradict the version of other prosecution witnesses,



who appears to supported the case of prosecution.
Admittedly, investigating officer of this case was not examined during the trial.

21. It would be apposite to reproduce Section 364 of the Indian Penal Code for the better sake of convenience:-

"Whoever kidnaps or abducts any person in order that such person may be murdered or may be so disposed of as to be put in danger of being murdered, shall be punished with imprisonment for life or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine."

22. It appears from the available evidences that informant of this case PW-4 turned hostile. He did not named appellant, even it appears from the deposition of victim that appellant saved him during the course of alleged kidnapping and stopped other co-accused from causing him physical assault. It also appears from testimony of victim/PW-1 that he raised only suspicion *qua* appellant being co-villager. From his testimony, it cannot be said that the appellant was



kidnapped the victim/PW-1 in order to commit his murder or may be so disposed of as to be put in danger of being murder.

23. Accordingly, the conviction of appellant under Section 364 of Indian Penal Code by the learned trial court is hereby quashed and set aside for the reasons that prosecution failed to established its case beyond reasonable doubt, as it could not established the basic legal ingredient of Section 364 of the Indian Penal Code.

24. Hence, appeal stands allowed.

25. Accordingly, the impugned judgment dated 20.05.2022 and the impugned order of sentence dated 03.06.2022 passed by the learned A.D.J.-V, Barh (Patna), in Sessions Trial No. 554/2006, arising out of Barh P.S. Case No. 19/2003 is hereby set aside/quashed.

26. Appellant namely, Bhimal Yadav is in custody in connection with this case, he is directed to be



released forthwith, if not required in any other case.

27. Fine, if any, paid be returned to the appellant immediately.

28. Office is directed to send back the trial court records along with a copy of this judgment to the trial court, forthwith.

(Chandra Shekhar Jha, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	24.10.2024
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