

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.711 of 2013

Arising Out of PS. Case No.-214 Year-1998 Thana- ARA MUFFSIL District- Bhojpur

1. Motilal Paswan.
2. Jawahar Paswan, Both sons of Late Butan Paswan.
3. Deonandan Paswan.
4. Sharma Paswan.
5. Saudagar Paswan.
All three sons of Late Triloki Paswan.
All resident of Village - Izari Pipara, P.S. - Ara (Muffasil), District - Bhojpur (Ara).

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Bachan Jee Ojha, Advocate
For the Respondent/s : Mr. Ramchandra Singh, APP

CORAM: HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA
ORAL JUDGMENT

Date : 14-11-2024

Heard learned counsel for the appellants and
learned APP for the State.

2. The present appeal has been filed under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.') challenging the judgment of conviction dated 17.09.2013 and order of sentence dated 21.09.2013 passed by the learned Adhoc Additional Sessions Judge-2nd Bhojpur at Ara in Sessions Trial No. 70 of 2007 by which the appellants/convict have been convicted for the offence punishable under Section 364 of Indian Penal Code and sentenced to undergo rigorous imprisonment for ten years and also fine of Rs. 5000/- each and in default of payment of fine, they have further to under go simple imprisonment for



six months.

3. The brief facts leading to the filing of the present appeal is that the prosecution story as alleged in the written report of the informant is that the appellants/accused persons came to the house of the informant and forcibly abducted her mother and assaulted her by pulling her arm and dragging her from her house. Further, it is stated that the reason behind the occurrence is said to be that the mother had two bighas of land which the accused persons/appellants were desiring to grab the same and the informant also suspected that the accused persons/appellants may got her mother murdered after getting an executing the said sale deed of the land.

4. On the basis of the *Fardbeyan* of the informant, Ara Muffasil P.S. Case No. 214 of 1998 was lodged under section 364 of the Indian Penal Code. After completion of investigation, chargesheet bearing no. 150 dated 16.11.1998 has been submitted against one accused person namely Motilal Paswan and supplementary chargesheet bearing no. 117 of 1999 dated 04.06.1999 has also been submitted against rest of the accused persons and thereafter, cognizance has been taken on 09.10.2001 by the Chief Judicial Magistrate, Bhojpur at Ara and the case was committed to the



Court of Sessions and thereafter the trial was proceeded.

5. During course of the trial, the prosecution examined altogether seven witnesses, namely, PW-1 Jitendra Paswan (hostile) PW-2 Nanhak Paswan (husband of the informant), PW-3 Prasuram Paswan (informant's brother-in-law), PW-4 Raj Kumar Paswan (son of the informant), PW-5 Daulitiya Devi (informant), PW-6 Dr. Jitendra Kumar Singh, and PW-7 Pashupati Nath Upadhyay (formal witness).

6. In support of the prosecution case, the prosecution has brought seven witnesses and, out of which, PW-1 has been declared hostile. PW-2 has also corroborated the prosecution case and further stated in his examination-in-chief that her mother-in-law was taken somewhere and kept in a closed room, and stated that the police came and recovered his mother-in-law from the accused person/appellants. PW-3 also stated to the similar story, but he has also stated that neither he was present at the time of occurrence nor has seen the occurrence of incident and is a hearsay witness. PW-4 who is the grandson of the victim has also stated to the similar story. PW-5 is the informant, who has stated similar story with regard to the occurrence and in her examination-in-chief as according to the *Fardbeyan*, she



has stated that the incident occurred at about 12 years ago.

7. Learned counsel appearing on the behalf of the appellants has submitted that this case has been instituted on the alleged date of occurrence in the morning, but information was given to the police at about 12 PM in the noon and recovered the victim. Learned counsel for the appellants has stated that the police has not mandatory followed the mandatory provisions of law for investigation of this case and investigation has been started without instituting the FIR. Further, he has stated that all the witnesses belonging to one family and there are no any independent witnesses in support of the prosecution case and even all witnesses of the case are of the family members of the victim. One of the prosecution witnesses has also become hostile. Investigating officer has also not been examined, which causes prejudice, to the accused persons/appellants. He further submitted that a gift deed was also executed by the victim in favour of the accused persons on 28.08.1989 and for the same Title Suit No. 4/90 has been filed which has marked as Ext-A. A compromise petition has also been filed between the victim and her daughter, who is the informant with the accused persons/appellants before the learned trial Court. He next



submits that the genesis of the occurrence, which is the execution of land belonging to victim has already been executed in favour of the accused persons/appellants prior to the alleged occurrence. Thus, the genesis of occurrence is not proved. On the basis of the above submissions, learned counsel seeks that the present appeal be allowed and the judgment passed by the trial Court be set aside.

8. In support of defence on behalf of the accused persons two witnesses DW-1, Tarkeshwar Prasad and DW-2 Mahabir Singh are examined. Both are formal witnesses who had proved the gift deed dated 28.08.1989 executed by victim in favour of accused persons.

9. Learned APP for the state has vehemently, opposed the contention of the learned counsel for the appellants and has submitted that all the witnesses are the family members and eye witnesses of the alleged occurrence, which cannot be discarded. All the witnesses have deposed that they have seen the occurrence. The injury report of the doctor and recovery list prepared by the police, also substantiates the prosecution case and both exhibits along with other witnesses evidences are available on record, conclusive in nature and the accused persons/appellants is



proved beyond all reasonable doubt.

10. From perusal of the entire evidences and materials available on record, it appears that the victim was abducted by the appellants on the pretext of getting the sale deed executed in favour of them for the land belonging to the victim and the victim was recovered by the police and seizure list was also prepared. It is surprising here to note that various factors which are evident on the face of it. The first is that the land in question was already executed in favour of the accused persons/appellants even before the occurrence, and for the same title suit was pending in the Court between the accused persons and the family of the informant. The second factor is that the victim herself has not been examined before the trial Court and only the family members of the victim are witnesses to the alleged occurrence. No any independent witness or neighbour has been made a witness in this case. Further, there are factors like the investigating officer, who was not examined in this case, no injury was found on the body of the victim and also only pain in the shoulder joint of the victim was detected by the doctor. It is also clear from going through the entire trial Court records that the FIR is not on the record. Further, the FIR has also not been



proved by the prosecution.

11. This court is of the view that the prosecution has not proved its case beyond all reasonable doubt and in such circumstances, it may not be proper to convict the appellants/accused on the materials available on record. However, the trial Court, having misled itself into specious reasoning that the trial Court has proceeded to render a conviction against the appellants, which, cannot be endorsed.

12. In view of the above, the impugned judgment of conviction dated 17.09.2023 and order of sentence dated 21.09.2013 passed by the learned Adhoc Additional Sessions Judge-2nd, Bhojpur at Ara in Sessions Trial No. 70 of 2007 against the appellants are set aside and the appellants are acquitted from the charges levelled against them. As the appellants are on bail, they are discharged from their liability of their bail bonds.

13. Accordingly, the appeal stands allowed.

(Ramesh Chand Malviya, J)

Anand Kr.

AFR/NAFR	NAFR
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