

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.987 of 2023

Arising Out of PS. Case No.-109 Year-2008 Thana- MOHAMMADPUR District- Gopalganj

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MUBARAK ALI @ MUBARAK RAY SON OF ALI AHMAD ALI @
TUKAR RAY RESIDENT OF VILLAGE- HARPUR TENGRAHI, PS-
MOHAMMADPUR, DISTT- GOPALGANJ

... .. Appellant/s

Versus

1. The State of Bihar
2. RAHUL SINGH SON OF RAMESH SINGH RESIDENT OF VILLAGE-
HARPUR TENGRAHI, PS- MOHAMMADPUR, DISTT- GOPALGANJ
3. MAKSUDAN SINGH NA RESIDENT OF VILLAGE- SAGRAMPUR, PS-
SAGRAMPUR, DISTT- EAST CHAMPARAN AT MOTIHARI
4. ANIL SINGH SON OF MAKSUDAN SINGH RESIDENT OF VILLAGE-
SAGRAMPUR, PS- SAGRAMPUR, DISTT- EAST CHAMPARAN AT
MOTIHARI
5. MANISH SINGH SON OF MAKSUDAN SINGH RESIDENT OF
VILLAGE- SAGRAMPUR, PS- SAGRAMPUR, DISTT- EAST
CHAMPARAN AT MOTIHARI
6. RAMESH SINGH SON OF LATE JAGDISH SINGH RESIDENT OF
VILLAGE- SAGRAMPUR, PS- SAGRAMPUR, DISTT- EAST
CHAMPARAN AT MOTIHARI

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr.Naresh Prasad
For the Respondent/s	:	Mr.Abhimanyu Sharma
For the informant	:	Mr. Vijay Kumar Sinha

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

6 29-04-2024 1. We have heard Mr. Naresh Prasad, the

learned Advocate for the appellant / informant and

Mr. Vijay Kumar Sinha, the learned Advocate for

respondent nos. 2 to 6. The State is represented



by Mr. Abhimanyu Sharma, the learned APP.

2. This appeal is directed against the judgment dated 14.07.2023 passed by the learned Additional Sessions Judge -VIII, Gopalganj in Sessions Trial No. 176/2011 arising out of Mohammadpur P.S. Case No. 109 of 2008, whereby the respondent nos. 2 to 6 have been acquitted from the charges levelled against them under Sections 364 and 323/34 IPC.
3. The brother of the informant is alleged to have been abducted / kidnapped from his house. He was not to be heard of for many years and, thereafter, a complaint was filed on 06.12.2008, which was sent under Section 156 (3) Cr.P.C. for institution of a regular case. This resulted in lodging of the subject F.I.R. on 20.12.2008.
4. According to the prosecution case lodged by PW4/informant/brother of the victim, a loan had been taken from the respondents for the purposes



of marriage of the victim. Later, the money given to the family of PW4 was demanded back. PW4 expressed his inability to pay back the debt because of impecunious circumstances of the family. A proposal then was put up that if the victim went to Jalandhar to work in a general provision shop, his salary would be subsumed in the loan amount which PW4 had to pay back to the respondents. Though, there was initial reluctance of the father of the victim / PW1 but then according to the allegation, the victim was forcefully taken away on 23.04.2006.

5. The Trial Court, on perusal of the entire records, found that the offence of kidnapping as also of assault has not been made out.

6. The Trial Court has examined six witnesses on behalf of the prosecution; out of which, four were the family members of the victim and the informant.



7. PW5 has turned hostile.
8. PW6 is the Investigating Officer of this case, who had never visited outside the police station to look for the victim.
9. While assailing the judgment of acquittal of respondent nos. 2 to 6, Mr. Prasad, the learned Advocate has argued that the Trial Court has gone mainly on the point of delay in lodging of the F.I.R., without looking at other important factors. The victim was forcibly taken away. Because of the family being under debt of the respondents, no effective protest could be made at that time.
10. Be that as it may, no salary came to the family which would have been paid to the victim, had he worked in the general store shop of one Baharan Rai of the same village. It was only on 30.11.2008 that PW4 visited Jalandhar in search of his brother as there was no news of him for all these months. PW4 was informed at



Jalandhar that his brother (victim) had left for his home town a month ago. This led to the filing of the complaint resulting into the registration of subject F.I.R.

11. We have found from the evidence of witnesses that though there is an allegation of the respondents having taken away the victim forcibly but if it were so, the informant or any other member of the family would not have waited for two years and eight months to file the case. If the family members of the victim had allowed the victim to be taken away, it was obviously only for the reason of acquiescence of the family members so that the debt could be repaid. That apart, waiting for two years and eight months for reporting the matter is something which weakens the prosecution case beyond repairs.

12. The assertion of PW4 that he visited Jalandhar on 30.11.2008 and was informed that



the victim had left for his home town a month ago is only an indication of the fact that for this while, the victim was alive and there was no complaint whatsoever from him to the family members about any ill-treatment or his being kept captive at Jalandhar.

13. That he left Jalandhar a month before 30.11.2008 leaves many questions answered.

14. Where did he go ? Did he run away to another place? Has he reported to the family members? Do the family members of the victim want a compensation from the respondents ? All these questions have remained unanswered for the lack of investigation in correct perspective by the Investigator. If it would have been investigated as to why the victim had not been heard of for all these months /years, many facts would have come to the fore.

15. The afore-noted grounds weighed with the



Trial Court and rightly so for acquitting the respondents.

16. We do not find any perversity in the judgment of acquittal of respondent nos. 2 to 6 for us to interfere with the same.

17. The appeal stands dismissed.

(Ashutosh Kumar, J)

(Jitendra Kumar, J)

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