

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.365 of 2004

Ashok Singh, Son of Lal Babu Singh, Resident of Village- Kotwa, P.S.
Kotwa, District- East Champaran. Appellant/s

Versus

The State of Bihar. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Krishna Kant Singh, Advocate Mr. Kundan Kumar, Advocate Mr. Shivesh Kumar Singh, Advocate Mr. Kumar Shaswat Anand, Advocate
For the Respondent/s	:	Ms. Anita Kumari Singh, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 20-12-2025

Heard learned counsel appearing on behalf of the parties.

2. The present appeal preferred by appellant/convict against judgment of conviction and order of sentence dated 18.05.2004 and 19.05.2004 passed by the learned Additional District and Sessions Judge, (Fast Track Court No. IV), East Champaran, Motihari in Sessions Trial No. 300 of 2002 (arising out of Kotwa P.S. Case No. 93/2001), whereby and whereunder appellant/convict has been convicted for the offences punishable under Sections 364, 379 and 120B of the Indian Penal Code. He sentenced to undergo rigorous imprisonment for seven years for the offence under Section



364 of the Indian Penal Code and fine of Rs. 10,000/- and in default of payment of fine, he shall further directed to undergo simple imprisonment for a period of one year and also sentenced him to undergo rigorous imprisonment for two years for the offences punishable under Section 379 of the Indian Penal Code. No separate sentence has been awarded under Section 120B of the Indian Penal Code.

3. The crux of prosecution, as it appears from the fardbeyan of the informant/PW-10 namely, Ram Naresh Pandit, son of Indradeo Pandit, who is the owner of Marshal Jeep that 31.8.2001 the driver of the jeep went to Kotwa Bazar to purchase some goods by the said jeep alongwith Khalasi (PW-3), namely, Lakhindra Yadav. At Kotwa Chowk accused Dabloo Singh told the driver to accompany him to his relative at Raxaul. He told the driver that he has already talked to the owner of the vehicle. On the said statement made by Dabloo Singh, the driver alongwith khalasi proceeded for Raxaul and reached Veerganj at 3:00 PM. At Veerganj some more persons boarded the said jeep, who were known to the said Dabloo Singh and on the order of Dabloo Singh, the



driver started for Kathmandu but due to road block near Pokhara, they returned back to Veerganj. While returning the driver was asked to take back seat by some of the accused persons and after some time the persons having taken away the driver, the jeep came back without driver and again after travelling about 2 k.m. from there, they forced khalashi to get down. The Khalashi came to the residence of the informant and told him entire story. The informant on the basis of the information supplied by P.W. 3, namely, Lakhinder Yadav, lodged fardbeyan and the case was instituted as Kotwa P.S. Case No. 93/2001 under sections 406 and 307 of the Indian Penal Code against accused Dabloo Singh, who is the named accused. Later on, it was converted into for the offences punishable under sections 364, 379 and 120B read with section 34 of the Indian Penal Code. From the statement of P.W. 10 (informant), it is apparent and clear that on the basis of the information supplied by Lakinder Yadav (PW-3), the FIR was lodged against Dabloo Singh only and thus it is apparent and clear that the informant is not an eye witness of the occurrence.



4. On the basis of aforesaid fardbeyan and after completion of investigation, police submitted charge-sheet against accused under Sections 364, 379 and 120(B)/34 of the Indian Penal Code.

5. After commitment, learned trial court explained charges to appellant/accused, on the basis of materials collected during investigation, which he pleaded “not guilty” and claimed trial.

6. To established its case before the learned trial court, the prosecution altogether examined total of fifteen witnesses, namely, Rajendra Singh **(PW-1)**, Shambhu Sharan Singh **(PW-2)**, Lakhinder Rai **(PW-3)**, Rameshwar Prasad Yadav **(PW-4)**, Gopal Yadav **(PW-5)**, Gopichand Thakur **(PW-6)**, Manager Rai **(PW-7)**, Mahendra Pandit **(PW-8)**, Pramila Devi **(PW-9)**, Ram Naresh Pandit (Informant-cum-Owner of Jeep) **(PW-10)**, Ranjan Kumar Singh (I.O.) **(PW-11)**, Jagarnath Rai **(PW-12)**, Kanti Rai alias Shyam Kant Rai **(PW-13)**, Indradev Pandit **(PW-14)**, Chandan Kumar **(PW-15)**.

7. The prosecution also exhibited following



documents during the trial to substantiate its case which are
as:-

Exhibit 1→ Signature of informant on fardbeyan.

Exhibit 2→ Fardbeyan.

Exhibit 3→ Formal FIR.

Exhibit 4→ Seizure List.

Exhibit 5→ Letter by which material exhibited was sent in the court.

Exhibit 6/1→ Signature of witness Kanti Rai on Seizure List

Exhibit 6/2→ Signature of witness Indradeo Pandit on Seizure List

Exhibit 6/3→ Signature of accused Ashok Singh on Seizure List.

Exhibit 7→ Statement of Lakhindra Rai recorded under Section 164 CrPC.

Exhibit 8→ Photocopy of owner's book of the Jeep bearing no. BR-OSP-5002.

Exhibit 8/1→ Photocopy of Insurance Paper of the Jeep bearing no. BR-OSP-5002.

Exhibit 8/2→ Photocopy of Registration book

Exhibit 9→ Death certificate of witness Sipte Alam.

8. After examination of the prosecution witnesses
and by taking note of evidences and incriminating



circumstances as surfaced during the trial, the statement of appellant/accused person was recorded under Section 313 of the Cr.P.C., which was denied in totality by showing complete innocence

9. No witness was examined in defence.

10. On the basis of aforesaid evidences as surfaced during the trial, the learned trial court convicted the appellant/convict and passed order of sentences in aforesaid manner, being aggrieved with, appellant/convict preferred the present appeal.

11. Hence the present appeal.

12. Heard learned counsel appearing on behalf of the appellant and learned APP appearing for the State.

13. 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.

14. Upon perusal of record and considering the arguments, it transpires that only *eye-witness* of the occurrence is **PW-3**, namely, Lakhinder Rai, who was Khalasi



(co-driver) of the vehicle. It appears from his testimony that while the vehicle was going towards Raxaul somewhere, in between the appellant alongwith other co-accused persons boarded the jeep and took away the driver/victim with him and after some time when they returned, the driver was missing with them. Whereafter the vehicle proceeded towards Raxaul border. It also appears from the record that **PW-8, PW-4, PW-5, PW-6 and PW-7** who supported the occurrence, deposed during the trial that the driver of the jeep was Dabloo Singh (co-accused) while jeep was proceeding towards Raxaul. It appears that the informant who is **PW-10**, namely, Ram Naresh Pandit is the owner of jeep and he came to know about the occurrence from the mouth of PW-3, who elaborately testified the overt act attributed by this appellant during occurrence but the FIR is silent about this appellant while authoring by **PW-10**, which was completely based upon information supplied by PW-3, making a serious doubt *qua* case of prosecution. The appellant was not named in the FIR. No doubt the FIR cannot be said as encyclopedia, but in view of the testimony of PW-3 that he was acquainted with



appellant since their childhood missing his name in FIR is a such crucial aspect, which creates a doubt *qua* involvement of appellant. It appears that “tying the neck of victim by belt” also appears missing while recording the statement of PW-3 under Section 164 of Cr.P.C. This incriminating version first time deposed during the trial.

15. PW-9, who is the wife of the victim is also appears hearsay witness and her testimony not appears relevant towards occurrence.

16. PW-1 is Rajendra Singh and **PW-2**, namely, Shambhu Sharan Singh are hostile and out of their testimony nothing appears relevant, which may use for the purpose of a contradicting or corroborating the statement of other prosecution witnesses, who supported the occurrence during the trial. It also appears that **PW-11**, who is Ranjan Kumar Singh, who is the Investigating Officer of this case, while deposing during the trial categorically testified that none of the witnesses disclosed during investigation *qua* involvement of this appellant, which also creates a doubt with present crime in question.



17. It appears from the impugned judgment that the conviction of appellant was also recorded for the reason that the cloth of Dabloo Singh was found with him. This fact not appears relevant *qua* confirming guilt or involvement of appellant with crime in question. Admittedly, the seized cloth is not of victim, it is of one of the co-accused and that too without any prior descriptions. Recovery of cloth of one of the co-accused from the possession of the appellant that too without any specification or identification hardly connect him with present occurrence and, therefore, same not appears relevant as per charge as raised against this appellant.

18. In view of aforesaid, it appears that prosecution failed to establish its case during the trial and, therefore, the judgment as recorded by learned trial court is hereby set aside.

19. Accordingly, appellant is acquitted from the charges levelled against him.

20. Hence, appeal stands allowed.

21. The impugned judgment of conviction and order of sentence dated 18.05.2004 and 19.05.2004 passed by the



learned Additional District and Sessions Judge, (Fast Track Court No. IV), East Champaran, Motihari in Sessions Trial No. 300 of 2002 (arising out of Kotwa P.S. Case No. 93/2001) is hereby set aside.

22. Appellant is on bail as submitted, Upon acquittal, his bailor and sureties stand discharged from his respective liabilities.

23. TCR, if any, be sent back to learned trial court along with the copy of this judgment, immediately.

24. I.A., if any, stands disposed of.

(Chandra Shekhar Jha, J)

veena/-

AFR/NAFR	NAFR
CAV DATE	NA
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