

(2002) 05 PAT CK 0092

In the Patna High Court

Case No : Criminal Appeal No. 230 of 1991 (SJ)

Anwar Mian, Mobarak Dewan @ Mobarak Sah, Rafique Mian
and Bahauddin Sah @ Basuddin Sah

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 20-05-2002

Acts Referred:

Penal Code, 1860 (IPC) — Section 34, 364

Citation : (2002) 3 PLJR 92

Hon'ble Judges : B.N.P. Singh, J

Bench : Single Bench

Advocate : Vijay Kumar Sinha No. 1 and Ratan Kumar Singh, for the Appellant;
B.P. Gupta, for the Respondent

Final Decision : Allowed

Judgement

B.N.P. Singh, J.—The Appellants suffered conviction u/s 364/34 of the Indian Penal Code (IPC) on being tried by the Assistant Sessions Judge, Bagaha, West Champaran, in Sessions Trial No. 426 of 1987 and were sentenced to suffer rigorous imprisonment for a term of seven years.

2. Salient features of the prosecution case, in short, was that on 27th February 1985, the Appellants allegedly came to the house of Kasidan Khatoon (P.W. 1) and took her son Idris Mian in their company for participating in a procession of one Chandramohan Prasad, who was presumably contesting some election. Since Idris it is alleged, did not return till late hours in the night, hectic searches were made by the family members and when inquiries were made from the Appellants, they had been making evasive reply. It is alleged that they firstly stated that Idris had stay at Ramnagar for witnessing a film at when he did not return to his house, inquiries were again made, when the Appellant replied that Idris had gone to his mate (sic) uncle's house. When Idris did not from there, the Appellants, on inquiry that Idris had gone to Punjab and (sic) when there was no evidence of his going Punjab, on further inquiry being made in the Appellants the Appellants,

it is alleged that they state that Idris would come on the occasion of with sweets and wearing apparels. However, on the occasion of Id also. Idris did eturn, and with these accusations, (sic) of the mother of Idris was return by the Police, pursuant to which (sic) nation commenced, on conclusion of Police laid charge sheet before the Defence of the Appellants was denial (sic) allegations and in their defence, examined two witnesses one of whom (sic) pared the allegations attributed to the Appellants about they having taken Idris in company for participating in a process of Chandramohan Prasad.

3. The State examined altogether eight Assesses including mother and wife of (sic) and also host of other witnesses in(sic)-Police Officer. However, the trial(sic) believing the prosecution witnesses rejecting defence of the Appellants, their innocence, convicted the Appellant u/s 364 IPC and sentenced to undergo rigorous imprisonment, as (sic) above.

4. It is stated at Bar that it is a case which the prosecution was launched (sic) edly not before lapse of six months by mother of the victim. Reiterating the mission, it is urged that if she is to be (sic) credence, she would state before the Court that only the following day she some suspicion about the conduct of Appellants and if that be so, it is most (sic) that she would not register a Police (sic) against the Appellants notwithstanding there being suspicion against them only following day of the incident. Next, it is that P.Ws. 1 and 2 were family member the victim but their evidences too inconsistent about the Appellants the debt of the victim. While com (sic) upon the credibility of P.Ws. 3 and (sic) urged that though they projected themselves to be the independent witness, their evidences too did not inspire (sic)dence.

5. Now coming to the witnesses, one may find P.W. 1 narrating before the trial Court that only after 5-6 days of the incident, she had narrated the incident to Mukhiya and it is urged that it was quite surprising that no action would be taken thereon. It is urged that though P.W. 2 claimed to be an ocular witness, she would not state as to what means of transport was used by the Appellants to take Idris in their company for participating in the procession of Chandramohan Prasad. P.W. 3 would state in most clear terms that though he had gone for participating in the procession of Chandra Mohan Prasad not being called by any one, but on his own motion. P.W. 4 would not claim to have accompanied the victim till last, as he would admit that he dropped in the midway. P.W. 6 would state to have learnt about the incident from the mother of the victim. The Police Officer examined at trial did not make major contribution to the investigation to lead to some irresistible conclusion. Other witnesses were either tendered by the State or turned hostile whose evidence did not merit consideration.

6. While evaluating the testimony of the witnesses, this fact cannot be lost sight of that apart from the infirmity that has crept in the prosecution evidences, if the prosecution version was accepted to be true on face value about the Appellants having taken Idris in their company, pursuant to which he was not seen alive, that by itself would not saddle the Appellants with the allegation of abducting

Idris with an intention to commit his murder. It is admitted that there is no evidence either about commission of murder of Idris by the Appellants, pursuant to his abduction from his house or there be any evidence about disposal of the dead body by them to lead to some conclusion about their complicity. The Appellants, in the facts and circumstances of the case, can be said to be last persons seen in the company of the victim, pursuant to which he was not seen alive. The State was required to lead positive evidence and credible evidence once it rested on the circumstantial evidence, about unbroken chain in the sequence of evidence which would exclude the hypothesis of the innocence of the Appellants, but that is not the case here and that apart, as has been rightly urged at Bar by the learned Counsel for the Appellants, that even the prosecution was launched belatedly by the State, not before the lapse of six months for which no plausible explanation was offered by the State. Though some sort of motive was sought to be introduced by the prosecution, which has been reiterated at Bar, but the prosecution allegation has not been consistent even on that score. It was not a case of direct evidence for which motive would not assume dominant role and would remain a matter of academic interest. Be that as it may, there was no such positive evidence on the record which would sustain the conviction of the Appellants.

7. Having taken into consideration the evidences placed on the record and the facts and circumstances of the case, I hold that the findings of the Court below are not based on meticulous appreciation of evidences and as such the findings recorded by the Court below are accordingly set aside and the Appellants are acquitted of the charges. They are also discharged from the liability of the bail bonds. This appeal accordingly succeeds.