

(2014) 02 PAT CK 0113

In the Patna High Court

Case No : Criminal Appeal (SJ) No. 326 of 1993

Netal Paswan

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 07-02-2014

Acts Referred:

Citation : (2014) 1 BBCJ 550

Hon'ble Judges : Akhilesh Chandra, J.

Bench : Single Bench

**Advocate : Mr. Ravi Kumar and Mr. Sanjeev Kumar, Advocate, for the Appellant;
Mr. Sujit Kumar Singh, APP, for the State**

Final Decision : Allowed

Judgement

Mr. Akhilesh Chandra, J.(Oral)—Heard the parties. The three appellants have preferred this Appeal against their conviction for the offence under Section 364 of the Indian Penal Code and sentence to undergo rigorous imprisonment for 10 years while acquitting from the charges under Section 302/201 of the Indian Penal Code by the First Additional Sessions Judge, Khagaria in Sessions Trial No. 300 of 1987 arising out of Gogri P.S. Case No. 2(5) of 74.

2. The prosecution has come out with a case instituted on the Fardbeyan of PW-9, Shiv Shankar Singh recorded on 03.05.1974 at 09:00 A.M. that in the previous evening while the informant along with his uncle Bindeshri Singh, Janardan Singh and others had gone for shopping and while returning they sat at a tea stall of one Chamru Sah, PW-2 where Halka Karamchari, Bindeshwari Singh (not examined) has arrived and due to prolong talk substantial time was consumed suddenly three appellants along with one Ram Swaroop Yadav (non-appellant) and in the garb of panchyati took Janardan Singh away with them and just after covering some distance started assaulting him. Attempt to save him was made by the informant and other persons but on threats given they came back intimidated father of the informant and collecting other persons from the village. Hectic search was started during which all the four miscreants were

found sitting at Basa of appellant Netal Paswan and on their statement of releasing Janardan Singh nothing could be done and when he could not be found the gathering made in second attempt to trace the miscreants who were found missing from the said Basa along with their all belongings. At this juncture, one black shoe which is said to be of Janardan Singh was recovered giving rise to suspicion to his killing. During investigation, subsequently, one dead body was found which was identified as of the abducted Janardan Singh.

3. The prosecution during trial besides examining altogether 10 witness producing the following documentary evidence:-

"Ext.-1- . F.I.R

Ext.-2 -. Fardbeyan

Ext.-3- .Forwarding entries on Fardbeyan

Ext.-4 Signature of Saryug Prasad Singh on the inquest report.

Ext.4/A Signature of Phulendra Prasad Singh on the inquest report

Ext.5 Inquest Report

Ext. 4/B Signature on the F.I.R.

Ext. 6. Post-mortem report

Ext. 7 Fardbeyan

Ext.8 Inquest report"

4. Altogether 10 witnesses had been examined out of whom PW-1, Rajendra Prasad Yadav is formal witness proved Exts.1 and 2 and PWs-3 and 10, namely, Arun Kumar Yadav and Ramesh Prasad are also formal witnesses respectively proved Exts.3 and 6. PWs. 2 and 8, namely, Chamru Saw and Phulendra Prasad Singh since said nothing about the occurrence declared hostile and PW-6, was tendered for cross-examination and out of remaining PW-4, Lelu Tati during examination-in-chief has almost stated the prosecution version with recovery of dead body from river side kept confined in a gunny bag. In para 8 of the cross-examination, this witness has said that the said Janardan Singh was abducted from the shop itself but none protested. However, after covering some distance the miscreants started assaulting there was an attempt to protest but due to threats nothing could be done. In spite of the fact, this witness is not sure whether miscreants were armed or not. Further in Para 16, at the place of alleged recovery of shoe, this witness found no other sign or mark.

5. PW-5, Bindeshri Singh has also stated the prosecution version during examination-in-chief and in cross-examination with hesitation he admits about one Bidya Singh said to be related with the victim and some differences between the two. PW-7, Nandlal Mandal during examination-in-chief appearing as hearsay witness who having information of the occurrence from the informant, PW-9 and

thereafter joining the search team along with others including Dafadar. He further admits in cross-examination about the said Bidya Singh and disputes between the two though immediately denied any dispute but in further cross-examination he becomes an eye witness of the occurrence. This gives rise to doubt somehow or the other he is a person interested in securing conviction of the miscreants.

6. Last but not least, PW-9, Sheo Shankar Singh stated the prosecution version and giving number of search team as 10 to 20 persons but fail to explain how and under what circumstances in spite of good number of search team, definitely crowd had been armed with some weapons specially when they were in search of a person who was forcibly abducted but in spite of meeting four miscreants again without any arm, could not be able to have control over them but only on receiving information that they have left captive speared them without giving any lesson for forceful dragging and assault as alleged. Further this witness states about Bidya Singh but tried to deny the disputes and statements given to the I.O. about him as well given by widow of the deceased. Here, at this juncture, none production of the alleged recovered shoe of the victim and the I.O. for no reason cross-examined again creates dark cloud against the prosecution case which the prosecution could not be able to dilute.

7. Having regard to the facts and circumstances, conviction and sentence of the three appellants as awarded by the trial Court in this case of the year 1974 appears not sustainable. Consequently, it is set aside and the Appeal is, hereby, allowed.

8. The appellants are set free from the liabilities of the bail bonds furnished on their behalf.