

(2012) 05 PAT CK 0022

In the Patna High Court

Case No : Criminal Appeal (SJ) No. 693 of 2007

Rajendra Prasad Yadav @ Rajendra Yadav

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 14-05-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161

Citation : (2012) 05 PAT CK 0022

Hon'ble Judges : Mandhata Singh, J

Bench : Single Bench

Advocate : Kanhaiya Pd. Singh, Mr. Chandra Mohan Jha, Mr. Anjani Kumar Jha, Mr. Vindya Keshari Kanhaiya, Mr. Sunil Kumar, CR. app SJ No. 693 of 2007, Mr. Vindya Keshari Kanhaiya, Mr. Sunil Kumar, CR. Rev. No. 1231 of 2007, for the Appellant; Ajay Mishra, Assistant Public Prosecutor For the State, CR. APP (SJ) No. 693 of 2007, Mr. S.N. Prasad, Assistant Public Prosecutor For the State, Mr. Kanhaiya Pd. Singh Mr. Chandra Mohan Jha, Anjani Kumar Jha, CR. Rev. No. 1231 of 2007, for the Respondent

Final Decision : Allowed

Judgement

Mandhata Singh, J.—Both cases arise out of the same P.S. (Neemchak Bathani P.S. Case No. 08/2005) are being heard together and disposed of by a common judgment. F.I.R. is lodged basing a written application of Ajay Kumar which, in brief, is that on 02.02.2005 at about 12.00 in the day his brother Lal Bahadur Yadav and his friend, Mithilesh Paswan had come his home from village Dhaulapur where they have been in connection with State Assembly Election. Ravindra Prasad was a candidate in the election and they were carrying voter list for him. All the family members were at the home. On the same day, i.e. 02.02.2005 at about 4.00 pm. R.J.D. candidate, Rajendra Prasad Yadav, Pramod Yadav and Rajeshwar Yadav Mukhiya from Atri Vidhan Sabha came his home, called informant's brother, Lal Bahadur Yadav and his friend, Mithilesh Paswan and forcibly taken away on a Marshal (vehicle). Rajeshwar Yadav taken away a motorcycle standing at the informant's door. Family members and neighbours

watched the incident but in fear of informant and others accompanying him (appellant) could not react anyway. Matter was informed to the District Election Officer by Mahendra Paswan. Due to fear of accused persons, they could not dare to come out from their house, so the matter was informed to Mahendra Paswan. Lastly, it is said that with intention to kill Lal Bahadur Yadav and Mithilesh Paswan both were abducted who remained traceless till filing of charge-sheet in the case.

2. In all, 9 witnesses are examined in the case. They are P.W.1 Rampati Devi, mother of Lal Bahadur Yadav, P.W.2 Sarita Devi, wife of Lal Bahadur Yadav, P.W.3 Ram Kishun Yadav, grand-father, P.W.4 Kanti Devi, sister, P.W.5 Ajay Kumar, informant and brother of Lal Bahadur Yadav, P.W.6 Ravindra Prasad, a candidate in assembly election, P.W.7 Ramanuj Singh, first I.O. of the case, P.W.8 Chandra Kumar, second I.O. and P.W.9 Chunni Singh.

3. Five witnesses are examined on behalf of the defence also and they are D.W.1 Rajendra Thakur, D.W.2 Nand Kishore Yadav, D.W.3 Kailash Yadav, D.W.4 Shyam Nandan Yadav and D.W.5 Lalita Devi.

4. P.W.9 is a formal witness, P.Ws. 7 and 8 both are the Investigating Officers and have investigated the case but at different stage. P.W.7 is the main Investigating Officer, who was entrusted with the investigation at the earliest stage, inspected the place of occurrence, recorded statement of most of the witnesses and handed over investigation to P.W.8 on his transfer. P.W.8 has submitted charge-sheet in the case. P.Ws.1 to 5 are claiming eye witnesses of the case. P.W.6 states about his candidature in election, victims' assistance (support) in his election and his coming to know abduction and remaining traceless of both the victims. Reason behind the kidnapping is shown support of victims namely, Lal Bahadur Yadav and Mithilesh Paswan to independent candidate Rabindra Prasad.

5. Conviction and sentence have been assailed on the ground that there was inordinate delay in lodging the F.I.R. and next witnesses are not corroborating prosecution case on the point of place of occurrence from where really victims of the case were taken away (abducted). Admittedly, abduction has been shown committed on 02.02.2005 one day earlier to the assembly election on 03.02.2005 and F.I.R. was lodged on 11.02.2005. This delay has been explained by making some statement by the prosecution witnesses including P.W.5, informant of the case. P.W.5 on this point in his examination-in-Chief states that the incident was informed by him to one Mahendra Paswan who assured him to inform the same to S.P. and D.I.G. but till late night Police did not come. Further, he states that next day, Police came, matter was informed to it but only an assurance was given that after enquiry, case should be lodged. Further, it is stated on his (informant's) behalf that regularly, he was going to Police but no case was lodged, for the last time he went to S.P. on 10.02.2005 and case was lodged on 11.02.2005 basing a written application.

6. Application is in handwriting of Mahendra Paswan signed by P.W.5 without any date shown received in Police Station on 11.02.2005 appears not satisfactory explanation in the circumstance that informant never appeared before the Police for his statement u/s 161 of the Cr. P.C. P.W.1 mother of the informant (P.W.5) in paragraph-5 states that a case was lodged for killing of Ram Brikch Yadav's daughter. Ajay and one Ramashraya Yadav were accused in that case. Specifically, it is submitted on behalf of the appellant that to avoid his appearance/arrest in that case, he (P.W.5) did not appear before the Police.

7. On the Point of place of occurrence, F.I.R. is clear enough that accused-appellant along with Pramod Yadav and Rajeshwar Yadav came his home, called his brother Lal Bahadur Yadav and his friend Mithilesh Paswan and forcibly got them sit on their vehicle (Marshall). For Rajeshwar Yadav, it is said that he took away motorcycle standing at the door.

8. Of the witnesses, P.W.6 is not an eye witness. He is one of the independent candidates fighting election of Atri constituency. Victims are said supporting him. Rest of the witnesses are stating that Rajeshwar Yadav came to their house asked Lal Bahadur Yadav and Mithilesh Paswan to follow him to this accused-appellant who was near the railway station. This distance has come near about 500 yard in the statement of P.W.7 in para-3.

9. On this point, F.I.R. may not be a substantive piece of evidence but in this case statement of P.W.5, informant of the case, in para-5 is that written application, basis of the F.I.R., was written on his (this informant's) dictation, he signed the same after finding it correct and true, that is Exhibit no.1 in the case. Once, as in the instant case, F.I.R. is lodged after lapse of 9 days and family members of the Informant remained present in house it will be taken as presumption that his family members were consulted. In discussed circumstance if the same is followed by delay in lodging the F.I.R. non examinations of any family members of another victim Mithilesh Paswan and political rivalry contradiction of the witnesses will play a vital role creating doubt on the prosecution case and prosecution witnesses to substantiate the conviction, so the conviction reached in this case is not liable to sustain. Once the conviction is set aside, no question arises about enhancing the sentence that is the result of the Criminal Revision.

10. On the observations made above, evidence on record and circumstance of the case, Criminal Appeal is allowed. The Judgment of conviction and order of sentence passed by the Additional Sessions Judge. F.T.C.-2nd, Gaya in Sessions Trial No. 319 of 2006/601 of 2006 are hereby set aside. Accordingly, accused-appellant is acquitted of the charge leveled against him in the case. He (accused-appellant) is in custody, is ordered to be released forthwith, if not wanted in any other case and set at liberty. In consequence Criminal Revision No. 1231 of 2007 is dismissed. Office is directed to send the lower Court records along with a copy of this judgment to the Trial Court.