

(2011) 09 PAT CK 0062

In the Patna High Court

Case No : Criminal Appeal (SJ) No. 462 of 2007

Sheo Pujan Yadav and Jawahar Bind

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 20-09-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 364

Citation : (2011) 09 PAT CK 0062

Hon'ble Judges : Dharnidhar Jha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Dharnidhar Jha, J.—The two Appellants were found guilty by the Presiding Officer of Fast Track Court-4, Jehanabad, in Sessions Trial No. 2 of 2004/ S.J. No. 46 of 2000 of committing the offence u/s 364 of the Indian Penal Code and either of the two Appellants was directed to suffer rigorous imprisonment for ten years as also to pay a fine of Rs. 1,000/-. In case the Appellants had defaulted in making payment of fine, each of them was directed to suffer rigorous imprisonment for further period of six months. The Appellants have appealed to this Court.

2. Ram Pragash Singh, the husband of P.W. 3, Siyamani Devi, is said to be taken away by the two Appellants at 8 P.M. on 23.10.1988. He did not return home. The lady stated that she went to the house of Jawahar Bind to make enquiry about her husband who stated to her that both the Appellants along with her husband went to the tube-well house of Appellant Sheo Pujan Yadav where some more persons had also assembled. Appellant Sheo Pujan Yadav asked Appellant Jawahar Bind to go back to his house and, accordingly, Jawahar Bind came back to his house.

3. After eleven days of the occurrence a written report was filed in the Police Station on 4.11.1988 pointing out that because the victim was being searched, as such, the delay in lodging the case. The case was investigated into and charge

sheet was laid for the trial of the two Appellants.

4. Five witnesses were examined during trial out of whom P.W. 2 Birendra Sharma and P.W. 5 Krishna Prasad were the witnesses of formal character who had proved the writings of the Police officer on the F.I.R.(Ext.1) and the endorsement on the written report (Ext.2). P.W.1, Balmiki Singh who was the elder brother of the victim was examined in chief but he could not be cross-examined as he did not turn up for the same and, as such, his evidence appears not fit to be considered. P.Ws. 3 and 4, i.e., the informant and the uncle of the victim, supported the story and on that basis the two Appellants were convicted.

5. The learned trial court has held that it was a case of two accused being seen last with the victim of the offence. Except that, there does not appear anything held by the trial court and there is No. allegation nor there is any evidence as to for what particular motive, the two Appellants could be taking the deceased away so as to causing his disappearance or disposing him of in such a way as could be treated to be murdered. In the case of circumstantial evidence it is paramount that the prosecution not only alleges but establishes motive, which could have impelled the accused to commit the offence. There is complete absence of allegation and, as such, there is No. proof of any motive. The two witnesses, P.Ws. 3 and 4 have stated that the victim Ram Pragash Singh was taken away from his house by these two Appellants. P.W. 3 was competent to say that because she was the wife of the victim and she could be a natural witness. The evidence of P.W. 4 could not be brushed aside as he was the uncle of the victim and he had given a particular reason for going to the house of the victim by stating that he had gone to Devi temple where he did not find the victim and, as such, to take him also with him to the temple, he had gone to the house of the victim when the victim was taken away by the two Appellants. Thus, the evidence of the witnesses that Appellant Jawahar Bind was responsible for causing disappearance of the deceased appears not supported by any one much less by an independent witness. The worst was that if that particular circumstance was used against the two Appellants, it was desirable that it could have been put as a question to the two Appellants during their examination u/s 313 of the Code of Criminal Procedure. But, that was also not done. The report was lodged after eleven days of the occurrence and in the light of the facts upon which the written report was filed, it was desirable that the prosecution had explained the delay properly. The general proposition by way of explanation that search was being made does not satisfy the Court. On the other hand, it appears that the lady and other witness P.W. 4 were also satisfied that the deceased might have strayed away from the company of the Appellants to any other place.

6. Regard being had to the discussions made above, I find merit in this appeal. Accordingly, the same is allowed by setting aside the judgment and order of sentence passed upon the Appellants and acquitting the Appellants of the charge for which they were convicted.

7. The Appellants are in custody. They shall be released forthwith, if not wanted

in any other case.