
(2013) 03 PAT CK 0067

In the Patna High Court

Case No : Criminal Appeal (DB) No. 580 of 2012

Sugapati Devi

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 19-03-2013

Acts Referred:

Evidence Act, 1872 — Section 106
Penal Code, 1860 (IPC) — Section 364

Citation : (2013) 3 PLJR 75

Hon'ble Judges : V.N. Sinha, J; Amaresh Kumar Lal, J

Bench : Division Bench

Advocate : Ranjeet Kumar Pandey, for the Appellant; Sudhir Singh and Arbind Kumar Singh for the O.P. No. 2 and Mr. Ashwani Kumar Sinha for the State, for the Respondent

Final Decision : Dismissed

Judgement

V.N. Sinha, J.—Appellant is the informant of Kateya P.S. Case, No. 129/01 dated 15.9.2001 registered for the offence u/s 364 of the Penal Code. She has filed this appeal challenging the judgment dated 24.3.2012 passed by 1st Additional Sessions Judge, Gopalganj in Sessions Trial No. 538/04, whereunder the prosecution case as set out in the aforesaid Kateya P.S. Case No. 129/01 has been disbelieved and the sole respondent acquitted of the charge that he abducted Subas Manjhi on 13.9.2001 at about 2 P.M. The prosecution case as set out in the First Information Report of the informant Sugapati Devi wife of Subas Manjhi dated 15.9.2001 is that a contract for raising of the Panchayat Bhawan, Semariya during financial year 1998-99 was taken by the respondent in the name of the husband of the informant Subas Manjhi. Civil work for the said construction began in the year 1999. During execution of the aforesaid civil work, respondent became accused and absconded. The contract for raising of the Panchayat building was executed by the husband of the informant. Final payment of the said contract has not yet been made. Respondent wanted payment of the final bill of the said contract in his presence and for such payment he was putting

pressure on the husband of the informant. On 13.9.2001 Thursday at about 2 P.M. respondent came to the house of the informant and asked her husband to accompany him to Panchdevari Block Office. Having accepted the suggestion of the respondent, husband of the informant went alongwith the respondent on his motorcycle. At the time of departure of the husband of the informant with the respondent, elder brother of the informant Parmanik Manjhi was also present in the house of the informant as he had come to provide the informant medicine and in his presence husband of the informant went alongwith respondent. The husband of the informant did not return in the evening. Informant searched for her husband in the village. Co-villager Barrister Rai also informed the informant that around 2 P.M. he had seen her husband going alongwith the respondent on his motorcycle towards, east. It is further stated in the First Information Report that husband of the informant has not come back until 15.9.2001, the date and time of lodging of the First Information Report and informant suspects that on account of differences in settlement of the accounts concerning execution of the contract for raising the Panchayat building, respondent has abducted her husband with ah intent to kill him.

2. Aforesaid prosecution case has been disbelieved on the ground that the prosecution evidence led to support the prosecution case does not make out the offence of abduction against the respondent as neither the contents of the First Information Report nor evidence of the informant P.W. 2 and her brother Pramanik Manjhi, P.W. 5 indicate that any force or deceitful means was applied by the respondent on 13.9.2001 at about 2 P.M. to carry the husband of the informant to Panchdevari Block for withdrawal of the final bill pursuant to the contract for raising the Panchayat building, Semariya.

3. The evidence of mother-in-law of the informant Patiraji Devi, P.W. 3 Paragraph 6, wherein she stated that there was enmity with respondent and he forcibly took her son Subas to Panchdevari Block with intent to kill but she did not raise any alarm, has not been accepted to prove the charge of abduction against the respondent as she is the only eyewitness out of the three eye-witnesses present at the time of occurrence to have stated that respondent forcibly took her son Subas on the motorcycle to Panchdevari Block. The other two eyewitnesses i.e. the wife of the victim P.W. 2 and his brother-in-law P.W. 5 have not stated that any force was applied by the respondent to take Subas as pillion on the motorcycle for going to Panchdevari Block. It also appears that independent eye-witness named in the First Information Report itself Barister Rai P.W. 4 has also not supported the occurrence and was declared hostile.

4. Counsel for the appellant challenged the judgment on the ground that the factum of Subas having accompanied the respondent on 13.9.2001 at about 2 P.M. on his motorcycle for going to Panchdevari Block stood proved by the evidence of the informant, P.W. 2, her mother-in-law, P.W. 3 and her brother, P.W. 5 it was for the respondent to disclose as to where did Subas disappear from the Panchdevari Block Office. It is only respondent who is aware about the

developments which took place after the departure of Subas and the respondent from the house of Subas on 13.9.2001 at about 2 P.M. Reliance in this connection is placed on Section 106 of the Indian Evidence Act as also on the judgment of the Supreme Court in the case of Prithipal Singh etc. Vs. State of Punjab and Another etc., .

5. Counsel for the respondent submitted that in the case of Prithipal Singh (supra) the factum of abduction of the husband of the informant was duly established by the prosecution with reference to the evidence of P.Ws. 2, 7 and 15 and in view of such proof Supreme Court with the aid of Section 106 of the Indian Evidence Act observed that only the accused person could explain as to what happened to the husband of the informant and if he had died, in what manner and under what circumstances he had died and why his corpus delicti could not be recovered.

6. Learned counsel for the respondent with reference to the judgment of the Supreme Court in the case of State of Maharashtra Vs. Annappa Bandu Kavatage, and in the case of Vinod Chaturvedi and Others Vs. State of Madhya Pradesh, further submitted that abduction of the husband of the appellant by the respondent having not been proved respondent cannot be asked to explain the whereabouts of the husband of the appellant. The onus to prove the charge of abduction against the respondent is on the prosecution, it is not for the respondent to prove his innocence.

7. Having heard counsel for the parties and perused the impugned judgment, it is quite evident from the evidence of the prosecution witnesses that charge of abduction of the husband of the appellant by the respondent has not been proved by the prosecution. The view taken by the trial court is a plausible view and we do not find any merit in the submission to interfere with the findings recorded by the trial court in the impugned judgment. The appeal is dismissed.