
(2011) 09 PAT CK 0108

Patna High Court

Case No: Criminal Appeal (SJ) No. 153 of 2007

Kamal Yadav

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision: Sept. 13, 2011

Acts Referred:

- Penal Code, 1860 (IPC) - Section 364

Citation: (2012) 3 PLJR 444

Hon'ble Judges: Dharnidhar Jha, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Dharnidhar Jha, J.

The two Appellants were indicted of committing the offence u/s 364 of the Indian Penal Code for being put on trial in Sessions Trial No. 190 of 2006 by the learned Presiding Officer of Fast Track Court V, Jamui. By judgment dated on 28.12.2006, the learned Judge convicted the two Appellants of the offence noted above and each of them was directed to suffer rigorous imprisonment for ten years by order of sentence passed on the same day. The Appellants appeal to this Court.

2. A total number of thirteen witnesses were examined during the course of trial out of whom P. Ws. 1 to 6 were declared hostile. P.W. 9 Kirni Devi, who was the wife of the victim Baiju Dass, was also not supporting the prosecution case and she was also declared hostile. P. Ws.10, 11, 12 and 13 were the Police witnesses but they did not give any material evidence as regards the proof of the charge. They simply stated that they had arrested the Appellants or any other person. P.W. 7 Lukhari Devi, who was the informant of the case and mother of the victim, had supported the charge but on perusal of her evidence in paragraph 4, what appears to me is that she could not be an eye witness to the occurrence rather she had stated in that particular paragraph that after her son Baiju Das had gone out to ease and did not return by 12 A.M. or 1 P.M., she still

waited for him and she was later told by her other son P.W. 8 Sundar Das that it were the Appellants who had taken the victim away. But, when my attention was drawn to Paragraph 3 of P.W. 8 what appears is that though the witness stated that he saw a motorcycle was going across the river at a distant place, but in spite of saying that he did not say that the victim was being carried by that motorcycle by the Appellants.

3. It further appears that he was told by persons who were around that particular place as if it were the two Appellants who had taken away his brother. Thus, P.W. 8 also appears a hearsay witness and not an eye witness. None has come to depose that he had seen the Appellants taking away the victim/deceased and had, in turn related that fact to P.W. 8 or any one.

4. On Consideration of the evidence which was available on the record what I find is that the learned trial Judge was committing a grave error in appreciating the evidence of the case so as to convicting the two Appellants of the charge u/s 364 of the Penal Code. I find that the charge had not been proved and, as such, the judgment of conviction and order of sentence could not be sustained.

5. In the result, the appeal is allowed by setting aside the judgment of conviction and order of sentence passed by the trial court and the Appellants are acquitted of the charge for which they were convicted.

6. Both the Appellants are in custody. They shall be released forthwith, if not wanted in any other case.