

**Biti Mian and Others Vs. the State of Bihar**

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**Court :** Patna

**Decided On :** Feb-03-2014

**Judge :** Akhilesh Chandra

**Appeal No. :** Criminal Appeal (SJ) No.387 of 2001

**Appellant :** Biti Mian and Others

**Respondent :** The State of Bihar

**Judgement :**

Oral Judgment:

Heard learned counsels appearing on behalf of the parties. This Appeal has been preferred by the 10 appellants against their conviction for the offence under Section 365/34 IPC and sentence to undergo rigorous imprisonment for three years and, appellant nos. 9,2 and 3 namely, Ram Ishwar Ram, Diljan Mian and Jai Mangal Tiwary respectively were also convicted for the offence under Section 148 IPC and sentence to undergo rigorous imprisonment for one year remaining were convicted for the offence under Section 147 IPC and sentence to undergo rigorous imprisonment for six months and, appellant no.1, Biti Mian was also convicted for the offence under section 354 IPC and sentence to undergo rigorous imprisonment for six months. However, the sentences are to run concurrently as awarded on 10th September 2001 by the learned 2nd Additional Sessions Judge, Bhojpur at Arrah in Sessions Trial No. 1 of 1990, arising out of Agiaon P.S. Case

No. 22 of 1987. The appellants were charged for the offence under Section 307 read with 34 IPC also but acquitted from such charge.

The prosecution case in short as revealed from Ext. 3, the Fardbeyan of PW-3, Fulwanti Devi, recorded on 24.06.1987 at 06:00 P.M. at the police station by Brindavan Sharma, Officer-in-charge (not examined) is that on 22nd June 1984, in the evening, while the informant was returning home along with her daughter, PW-1, after meeting natural call she reached near the house of appellant no.8, Bhagwan Chamar, where appellant nos. 1,2,3,5,6,8,10 were sitting there appellant no. 1 caught hold of her by putting his towel in her neck and after pressing her mouth started dragging and. Appellant nos. 2 and 3 were armed with gun and appellant nos. 8 and 10 were armed with lathi. In the meantime, PW-1, daughter of the informant run away from there to call her father, PW-2, at that time who was taking meal at the house of one Lochan Singh (not examined). The informant was dragged and pulled up to the house of appellant no.9, Ram Ishwar Ram who was armed with gun. In the way, on being found, the informant in awkward position, one outsider also objected and provide his own towel to cover her. In the meantime, PWs 1 and 2 also arrived there and PW-2 got her released from immediate clutches but both were immediately taken under and after covering their eyes abducted. Their daughter, PW-1 accompanied them. They had to cross nearby river and where kept confined in another village. In the way, they were handed over to another group after spending period of confinement all over the day. In the night, there was an offer to change side and when it was accepted by the informant meal was provided and after confirming change of mind and assurance being given not to intimate anyone about the said occurrence they were being brought back. In the way of return, appellant nos. 1,6, 8 and 10 were also met and threatened what was earlier done by their associates. On arrival at their house they found police party but avoided to make any statement there and requested to be taken to police station where statement was recorded and case was instituted.

During trial, the prosecution has produced Ext.1, signature of PW-3 on the FIR, Ext.-2, injury report and Ext.-1/1 the FIR. Besides, examining five witnesses out of whom PW-5, Ashok Kumar an advocate Clerk formal witness proved Ext.1/1 and

PW-4, Dr. Lalan Prasad Singh, who examined PW-3 on 25.06.87 found the following injury and proved Ext.2. The injuries are as under:

œ(i). Abraision on the left side of the neck.

(ii) Abrasion on the right shouldere.

(iii) Abrasion on the back side of the waist.

(iv) Bruise on the left knee.?

PW-1, Mina Kumari, examined on 31st March 1998 i.e. roughly 11 years after the occurrence stated the prosecution case with some improvement regarding confinement for two days in a house. In her cross-examination, she has given details of nearby villages and she states that nothing was done with her neither she was tied nor her eyes were kept closed. In spite of being put in such better situation, she has not stated the details of the place/places of her confinement. Had there been any attempt to locate and whether any such attempt been made or not? It could be stated only by the I.O., who for no reasons has not been examined.

PW-2, Sheojee Lal, one of the sufferers (victim) and husband of the informant almost states the prosecution case in brief. In his cross-examination he states that on being informed by PW-1 he arrived alone at the house of one Munshi Ram stays for ten minutes none came there and he was alone whereas as per PW-1 and own statement of this witness, in Examination-in-Chief, he was at least accompanied by his own daughter and this witness further assert before the police. Statement of his daughter PW-1 was recorded and this corroborates the statement of PW-1 on the point of sequence of making the statement. If it is so why and under what circumstances on the statement of PW-1 no case was instituted and if the informant was examined by the police subsequent to PW-1 institution of the case on her statement castes doubt.

PW-3, Fulwanti Devi, while stating prosecution version makes improvement by stating except appellant nos. 2 and 3 who is having gun remaining were armed with pistol and she further increases either of confinement and states about

shifting from one village to another before being released which she has not stated before the I.O.. As stated in her cross-examination, she has also stated that on arrival of Dafadar she narrated the incident to him and thereafter she was brought to the police station and further she did not say the place of occurrence to the police which ought to have been done and here non-examination of the I.O. casts some prejudice to the accused appellants.

Having regard to the facts and circumstances, it appears that prosecution could not be able to establish its case after removing the clouds casted against. In that view of the matter, conviction and sentence of the appellants as awarded by the trial Court is not sustainable. Consequently, it is set aside and Appeal is hereby allowed.

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

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