

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.229 of 2004

Arising Out of PS. Case No.-74 Year-1999 Thana- MURLIGANJ District- Madhepura

RAM PRASAD YADAV S/o- Late Ganga Prasad Yadav R/v- Ramni Ps-
Murliganj Dist- Madhepura

... .. Appellant/s

Versus

The State of Bihar Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (SJ) No. 240 of 2004

Arising Out of PS. Case No.-74 Year-1999 Thana- MURLIGANJ District- Madhepura

Ajay Kumar Yadav S/O Sri Ram Prasad Yadav R/O Village- Ramni, P.S-
Murliganj, Distt.- Madhepura.

... .. Appellant/s

Versus

The State of Bihar Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (SJ) No. 229 of 2004)

For the Appellant/s : Mr. Sanjay Kumar, Advocate

For the Respondent/s : Mrs. Anita Kumari Singh, A.P.P.

(In CRIMINAL APPEAL (SJ) No. 240 of 2004)

For the Appellant/s : Mr. Sanjay Kumar, Advocate

For the Respondent/s : Mrs. Anita Kumari Singh, A.P.P.

CORAM: HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
ORAL JUDGMENT

Date : 20-09-2025

Both the above stated appeals have arisen out of
same judgment of conviction dated 26.03.2004 and order of
sentence dated 29.03.2004 and accordingly they have been
heard together and a common judgment is being passed in both
the above stated appeals.

2. Heard learned counsel for the appellants and



learned A.P.P. for the State.

3. The above stated appeals have been directed against the judgment of conviction dated 26.03.2004 and order of sentence dated 29.03.2004 passed by learned Additional Sessions Judge, Madhepura in Sessions Trial No. 93 of 2001 corresponding to G.R. Case No. 639 of 1999 arising out of Murliganj P.S. Case No. 74 of 1999 whereby and whereunder the appellants have been convicted for the offence punishable under Section 364 of the I.P.C. and have been sentenced to undergo rigorous imprisonment for ten years.

4. According to written report of informant (PW-2), the occurrence is of 04.06.1999 at 4:00 PM whereafter FIR was registered by S.H.O., Murliganj Police Station Madhepura.

5. As per prosecution case, the P.W. 2 who is the informant of the case, narrated the story of prosecution alleging therein that on 04.06.1999 at 4 PM he alongwith his son Rakesh Kumar Yadav @ Baba Ji was sitting on the door, in the meanwhile, Ram Prasad Yadav (appellant in Cr. Appeal SJ No. 229 of 2004) came to his door and on the pretext of some urgent work, took the informant's son. It is alleged that after some time son of Ram Prasad Yadav, namely, Ajay Kumar Yadav (appellant in Cr. Appeal SJ No. 240 of 2004) was seen proceeding towards



Pratapnagar alongwith informant's son, namely, Rakesh Kumar Yadav. Thereafter, the informant made enquiry from the father of appellant-Ajay Kumar Yadav who disclosed that he sent his son to Pratapnagar for some urgent work and they would be returned back by the evening. It is alleged that when the son of informant did not return in the evening, informant proceeded to Pratapnagar to trace his son and when informant reached Pratapnagar, he saw that in the garden of Maksoodan Singh, co-accused Sukal Yadav had forcibly made informant's son sit on a *Rajdoot* motorcycle by showing him a 'three-nut' and threatening him to kill and appellant- Ajay Kumar Yadav was seated behind him on the motorcycle. It is alleged that co-accused Sukal Yadav gave his three-nut to appellant -Ajay Kumar Yadav and told that if victim raises alarm, he would be killed. Thereafter, they proceeded alongwith the victim towards village Rajni on motorcycle with intention to kidnap. It is further alleged kidnappers were on two motorcycles and three persons were sitting on another motorcycle to whom the informant could not see but claimed to identify after seeing their face. It is alleged that that the occurrence has been witnessed by Badri Yadav (P.W.3), Arbind Yadav (not examined), Vedanand Yadav (P.W.4) and Ramesh Kumar Yadav (P.W.1) and other villagers. It is



further alleged that on 04.06.1999 Panchayati had taken place in village Ramni in respect of kidnapping of informant's son where appellant - Ram Prasad Yadav accepted the factum of kidnapping and assured that he would assist in recovery of his son. On the said assurance, informant waited for three to four days. In the evening of 08.06.1999, informant learnt from some persons that his son was killed by the kidnappers.

6. On the basis of aforesaid written report, Muraliganj P.S. Case No. 74 of 1999 dated 21.06.1999 was registered under Section 364/34 of IPC. Routine investigation followed. Statement of witnesses came to be recorded and on the completion of investigation, charge sheet has been submitted against the appellants under Sections 364/34 of the IPC. Thereafter, on 15.11.2000 the learned trial court took cognizance against the appellants under the aforementioned sections of IPC. On 18.04.2001 the case was received in the Court of learned Sessions Judge after commitment. Thereafter charges were framed against the appellants under Section 364 of the IPC. Charges were read over and explained to the appellants to which they pleaded not guilty and claimed to be tried.

7. In order to bring home guilt of accused persons, prosecution has examined altogether five witnesses.



PW-1 Ramesh Kumar, PW-2 Shiv Nandan Yadav (informant of the case), PW-3 Badri Yadav, PW-4 Vedanand Yadav , PW-5 Raj Nandan Yadav.

8. Prosecution has relied upon following documentary evidence on record:-

Ext. 1- Signature of informant on written report.

Ext. 1/1 – Signature of informant on statement recorded under Section 164 Cr.P.C.

9. Defence of the appellants as gathered from the line of cross examination of prosecution witnesses as well as from the statement under Section 313 of the Cr.P.C. is that of total denial. However, they did not enter into defence.

10. After hearing the parties, the learned trial court was pleased to convict the appellants and to sentence them as indicated in the opening paragraph of the judgment.

11. Learned counsel for the appellants has submitted that Investigating Officer of this case has not been examined which caused serious prejudice to the defence as due to non examination of I.O., the place of occurrence could not be proved. It has been submitted that all the witnesses were examined on behalf of the prosecution side are the relative witnesses / interested witnesses except P.W. 4. He further



submits that P.W. 1 is son of informant's brother-in-law and the said fact has been admitted in para 7 of cross examination of the P.W. 2. P.W. 3 is *samdhi* of informant and he is also a chance witness. P.W. 5 has not supported the prosecution case and hence, he has been declared hostile.

12. Learned counsel for the appellants has submitted that occurrence took place on 04.06.1999 at 5 PM and FIR was lodged on 21.06.1999 i.e. after delay of about 17 days. It is unfathomable to believe that informant, who is father of the victim and victim had been kidnapped and informant waited for 17 days for lodging FIR, in this situation not a single prudent man can believe that father had been waiting to lodge the FIR whose son has been kidnapped in the light of the fact that informant is claiming to be eye witnesses of the alleged occurrence which questions the authenticity of the prosecution story. He further submits that from the perusal of FIR itself, there are four other persons who have seen the occurrence. He further submits that the statement of P.W. 1 is quite contradictory with the statement of P.W. 2. P.W. 1 has revealed that he has given information to P.W. 2, who is informant of the present case, regarding the said occurrence. Learned counsel for the appellants has submitted that the FIR reflects that all the



persons, who were present at the place of occurrence, are eye witness of the occurrence, then, question arises how the source of information is shared by P.W. 1 to P.W. 2, if both are witnessing the occurrence. He further submits that P.W. 2 has narrated the story that a *Panchayati* had taken place so he waited for some days to initiate prosecution story but the said statement is quite inconsistent as P.W. 2 in para-4 of his cross examination has stated before the Magistrate that no *Panchayati* has taken place in respect of kidnapping. He further submits that if all are the eye witness of the said occurrence, no question arises with regard to share the source of information regarding the occurrence to one another. Learned counsel for the appellants further submits that prosecution has not proved the case beyond all reasonable doubt and the statement of witnesses are quite shaky when they are claiming to be the eye witnesses of the occurrence. He further submits that after close scrutiny of statement of P.W. 1, it is found that he came to know about the occurrence and after that he has informed to the informant (P.W.2) regarding the occurrence which means that he has not seen the occurrence. P.W. 2, who is informant of the case, has himself stated that he has seen the occurrence with his own eyes and he has not explained regarding delay of 17 days in lodging



the FIR, though occurrence took place on 04.06.1999 and how the story narrated by informant would be trustworthy in the light of the fact that informant's son has been kidnapped and he waited for 17 days to lodge the FIR. Learned counsel for the appellants has submitted that the very clear cut suggestion was given by the appellants' side that the deceased was in the company of Bhado Yadav and there might be possibility that he was being accompanied by the person who involved in such kind of activity and the appellants have no role to play, so far as the material available on record does not prove the culpability of appellants. He further submits that there are other miscreants also as evident from FIR but they were not identified and no investigation was done and I.O. has not been examined so several other questions are left unattended. So far as contradictions and inconsistencies between the statements of witnesses are concerned, the prosecution has failed to prove the case beyond reasonable doubt.

13. Learned counsel for the State has submitted that informant, who is father of the victim/deceased, has narrated the story of prosecution and he has stated the manner of occurrence and time of occurrence. Learned A.P.P. further submits that P.W.2 has given details regarding the place of



occurrence and has supported the story of prosecution during the course of examination-in-chief. Though some contradictions are bound to occur in natural course but other witnesses have supported the occurrence and in the light of the facts and circumstances of the case, prosecution has proved its story and the concerned court has passed the judgment of conviction and order of sentence on the basis of material available on record. Hence, no interference is needed. It has been submitted that even I.O. has not been examined but the material witnesses i.e. informant and other witnesses, who have seen the occurrence as is evident from the FIR, have supported the story of prosecution.

14. I have perused the impugned judgment, order of trial court and trial court records. I have given my thoughtful consideration to the rival contention made on behalf of the parties as noted above.

15. The question arises whether the prosecution has proved the case beyond reasonable doubt in the light of material available on record.

16. It is necessary to evaluate the evidence of witnesses who claims to be the eye witness of the alleged occurrence. From perusal of the FIR, it is quite evident that the informant, who is the star witness of the alleged occurrence and



whose son has been kidnapped, has disclosed the manner of occurrence. It is necessary to test the veracity of this witness upon the touchstone of manner of occurrence, time of occurrence and place of occurrence.

17. P.W. 2 / Shiv Nandan Yadav claims to be the eye witness of the occurrence as per version of his written statement and he has stated that other persons namely, Badri Yadav(P.W. 3), Arvind Yadav(not examined), Vedanand Yadav(P.W. 4) and Ramesh Kumar Yadav (P.W.1) had also seen the occurrence but during cross examination in para-4 he has stated before the Magistrate that no Panchayati has taken place in respect of kidnapping but in FIR he has stated that on 04.06.1999 Panchayati had taken place in village Ramni in respect of kidnapping of informant's son. He has also not stated before the Magistrate that he waited for 3-4 days on the assurance of returning back of his son. He has stated before the Magistrate that on 08.06.1999 by evening, his kidnapped son had been killed. The statement of P.W. 2 in examination in chief is just like parrot version but during the cross-examination his statement is quite inconsistent. His statement is quite inconsistent with regard to source of information regarding the alleged occurrence. He has stated in para-7 of his cross



examination that Ramesh Yadav (PW-1) has given the information that his son was kidnapped on the point of three nut upon a motorcycle which is totally inconsistent with the initial version of prosecution story.

18. PW-1 / Ramesh Kumar has stated in para-4 of his cross examination that when he came to know about the kidnapping of Rakesh Kumar, he stated to his Fufa (Shiv Nandan Yadav). The statement of PW-1 clarifies that he came to know about the alleged occurrence of kidnapping which means that he was not eye witness rather he became aware of the said occurrence from the source which he has not divulged during the course of adducing evidence.

19. Though P.W. 1 and P.W. 2 witnesses are claiming to be eye witness but the source of information which was shared by PW-1 is also based on hearsay evidence and in the light of the fact that the occurrence took place on 04.06.1999 and the FIR was lodged on 21.06.1999 . It clarifies that when the source of information received by P.W. 1 is based on hear say evidence, then, the information shared by P.W. 1 to P.W. 2 is totally based on hear say evidence. In this way, both are not the eye witnesses of the alleged occurrence and P.W. 2 in para 9 of his cross-examination has stated that he visited Pratapnagar



alongwith Ganesh Yadav and Surendra Yadav and after covering some distance, they returned but Ganesh Yadav and Surendra Yadav have not been examined on behalf of the prosecution. The veracity of evidence of PW-2 is already in question regarding the source of information of alleged occurrence. He has also stated that he went Pratapnagar alongwith Ganesh Yadav and Surendra Yadav but Ganesh Yadav and Surendra Yadav have not been examined on behalf of the prosecution. The statement of PW-1 and PW-2 are quite shaky in light of the discussions made above.

20. PW 3 / Badri Yadav is *Samdhi* of the informant and he is also claiming to be eye witness of the alleged occurrence as per version of the FIR. P.W. 3 in his examination in chief has stated that at the relevant time of the occurrence he was working in the field but in para 3 of his cross examination he has stated that he was not working in the field at the relevant time. He has stated that informant assisted this witness for adducing the evidence in court, He has further stated that he informed the informant regarding the said occurrence at 7 to 8 PM that he has seen the accused persons and he admitted that police has not made any query from him. His statement on the point of enquiry regarding the police is quite contradictory



as in para 3 of his cross examination he has deposed that police has taken his statement whereas in para 4 of cross examination he deposed that police has not made any query. Being relative, he was assisted by P.W. 2 to adduce his statement in court. He is merely a chance witness and at the relevant time of occurrence whether he was working at the field same was denied by him. His statement is quite shaky as at one time he stated that he was working in the field and another time he stated before the court that he was not working in the field at the relevant time. His presence on the point of occurrence is quite contradictory.

21. PW-4 / Vedanand Yadav has stated in his examination in chief that while returning from the shop of Sito Sah in Jhakran, he saw two motorcycles and three persons were seated on each motorcycle. He stated that he identified Sukal Yadav who was driving one of the motorcycles and Baba Jee @ Rajesh Kumar was found seated on the said motorcycle but he did not identify the third person sitting on the said motorcycle. He further stated that later on he came to know that informant's son was murdered after kidnapping but from the perusal of evidence, it is evident that he has not made any whispering against the appellants with respect to kidnapping of informant's son. He further stated that he has not seen the occurrence as is



evident from his examination in chief and he deposed that he learnt regarding the alleged occurrence after some time.

22. PW-5 / Raj Nandan Yadav has stated that he has no knowledge regarding the occurrence. He has been declared hostile by the prosecution.

23. Apart from that the Investigating Officer of this case has not been examined who is the material witness on the point of identifying the place of occurrence.

24. It is necessary to highlight the several discrepancies in the prosecution story which has not been either investigated or not proved just because I.O. has not been examined. The story of prosecution clarifies that motorcycle has been used in the alleged occurrence to kidnap the informant's son. On the point of use of said motorcycle, the number plate of the said motorcycle had not been subjected to investigation. There is another motorcycle which was also used in the alleged occurrence and informant claimed to identify the miscreants whenever he gets opportunity to identify them.

25. Another serious infirmity lies in the non-examination of the Investigating Officer. The omission has caused prejudice to the accused as the defence was deprived of the opportunity to confront the officer with contradictions and



omissions in the witnesses' statements. In ***Behari Prasad Vs. State of Bihar*** reported in (1996) 2 SCC 317, the Hon'ble Supreme Court held that though non-examination of the Investigating Officer may not always be fatal where it causes prejudice to the accused, it becomes a significant infirmity, as observed in the judgment which reads as under:-

"We may also indicate here that it will not be correct to contend that if an Investigating Officer is not examined in a case, such case should fail on the ground that the accused were deprived of the opportunity to effectively cross examine the witnesses for the prosecution and to bring out contradictions in their statements before the police. A case of prejudice likely to be suffered by an accused must depend on the facts of the case and no universal straight jacket formula should be laid down that non examination of investigating Officer per se vitiates a criminal trial. These appeals, therefore, fail and are dismissed. The appellants who have been released on bail should be taken into custody to serve out the sentence."

26. Applying this principle to the present matter, this Court finds that the omission to examine the Investigating Officer has, in fact, caused serious prejudice to the defence. The prosecution version suffers from contradictions and omissions in



the statements of the witnesses and the only person who could have clarified or explained such contradictions was the Investigating Officer.

27. The failure to examine the Investigating Officer also means that the place of occurrence has not been duly established. At this point, it would be relevant to take note of the decision passed by the Hon'ble Supreme Court in the case of ***Syed Ibrahim versus State of Andhra Pradesh***, reported in ***(2008) 10 SCC 601***, wherein it has been held that "when place of occurrence itself has not been established, it would not be proper to accept the prosecution side."

28. In the light of delay in lodging the FIR, it is necessary to cite following judgments:-

(i) ***Dilawar Singh Vs State of Delhi*** reported in ***AIR 2007 Supreme Court 3234*** wherein at para 8, the Hon'ble Supreme Court has held as follows:-

8. In criminal trial one of the cardinal principles for the Court is to look for plausible explanation for the delay in lodging the report. Delay sometimes affords opportunity to the complainant to make deliberation upon the complaint and to make embellishment or even make fabrications. Delay defeats the chance of



the unsoiled and untarnished version of the case to be presented before the Court at the earliest instance. That is why if there is delay in either coming before the police or before the Court, the Courts always view the allegations with suspicion and look for satisfactory explanation. If no such satisfaction is formed, the delay is treated as fatal to the prosecution case.

(ii) In Jasbir Singh Vs State reported in 2022 SCC OnLine Del 1427 wherein at para 24 it has been held as follows:-

“24. In the instant case, the FIR was lodged by the complainant after an inordinate and unexplained delay of three days at Police Station, which renders the FIR in this case wholly unreliable. The delay in lodging the FIR corrodes the credibility of the prosecution story. The Hon'ble Supreme Court in several cases held that delay in loading the FIR creates a doubt, if the said delay is not properly explained.”

(iii) In Thulia Kali v. The State of Tamil Nadu reported in **(1972) 3 SCC 393**, the Hon'ble Supreme Court, emphasizing the necessity of explaining the delay in lodging



FIR, has held as follows:-

12.... First Information Report in a criminal case is an extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced at the trial. The importance of the above report can hardly be overestimated from the standpoint of the accused. The object of insisting upon prompt lodging of the report to the police in respect of commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as the names of eye witnesses present at the scene of occurrence. Delay in lodging the First Information Report quite often results in embellishment which is a creature of afterthought. On account of delay the report not only gets bereft of the advantage of spontaneity danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation. It is, therefore, essential that the delay in the lodging of the first information report should be satisfactorily explained...."

(iv) In *Meharaj Singh & Ors. Vs. State of U.P. &*



Ors. Reported in **(1994) 5 SCC 188** the Supreme Court has observed as follows:-

“12... The object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstance in which the crime was committed, including the names of the actual culprits and the parts played by them, the weapons, if any, used, as also the names of the eye witnesses, if any. Delay in lodging the FIR often results in embellishment, which is a creature of an afterthought. On account of delay, the FIR not only gets bereft of the advantage of spontaneity, danger also creeps in of the introduction of a coloured version or exaggerated story. With a view to determine whether the FIR, was lodged at the time it is alleged to have been recorded, the courts generally look for certain external checks. One of the checks is the receipt of the copy of the FIR, called a special report in a murder case, by the local Magistrate. If this report is received by the Magistrate late it can give rise to an inference that the FIR was not lodged at the time it is alleged to have been recorded, unless, of course the prosecution can offer a satisfactory explanation for the



delay in dispatching or receipt of the copy of the FIR by the local Magistrate. Prosecution has led no evidence at all in this behalf. The second external check equally important is the sending of the copy of the FIR along with the dead body and its reference in the inquest report. Even though the inquest report, prepared under Section 174 Cr. P.C. is aimed at serving a statutory function, to lend credence to the prosecution case, the details of the FIR and the gist of statements recorded during inquest proceedings get reflected in the report. The absence of those details is indicative of the fact that the prosecution story was still in embryo state and had not been given any shape and that the FIR came to be recorded later on after due deliberations and consultations and was then ante timed to give it the colour of a promptly lodged FIR..."

(v) In **Satpal Singh Vs. State of Haryana** reported in **(2010) 8 SCC 174**, the Hon'ble Supreme Court has observed as follows:-

"15. This Court has consistently highlighted the reasons, objects and means of prompt lodging of FIR. Delay in lodging FIR more often than not, results in embellishment



and exaggeration, which is a creature of an afterthought. A delayed report not only gets bereft of the advantage of spontaneity, the danger of the introduction of a coloured version, an exaggerated account of the incident or a concocted story as a result of deliberations and consultation, also creeps in, casting a serious doubt on its veracity. Thus, FIR is to be filed more promptly and if there is any delay, the prosecution must furnish a satisfactory explanation for the same of the reason that in case the substratum of the evidence given by the complainant/informant is found to be unreliable, the prosecution case has to be rejected in its entirety.

29. Before discussing about the laconic questions put to him, evoking an equally laconic answer, I deem it appropriate to list the incriminating circumstances appearing against the appellants in this case.

30. Appellant - Ram Prasad Yadav came to informant's door and on the pretext of some urgent work, took the informant's son and after some time appellant - Ajay Kumar Yadav was seen proceeding towards Pratapnagar along with informant's son and when son of informant did not return in the evening, informant proceeded to Pratapnagar to trace his son.



Informant saw that in the garden of Maksoodan Singh, co-accused Sukal Yadav had forcibly made informant's son sit on a *Rajdoot* motorcycle by showing him a 'three-nut' and threatening him to kill and appellant- Ajay Kumar Yadav was seated behind him on the motorcycle. It is alleged that kidnappers were on two motorcycles and three persons were sitting on another motorcycle.

31. These incriminating circumstances were never put to the appellants under Section 313 Cr.P.C. All that the Trial Court asked from the appellants was whether the allegation against appellants alongwith others of concertedly committed kidnapping the informant's son with intention to kill is true, to which they denied.

32. The law on the aspect of the importance of Section 313 examination of an accused has now been so well settled that it requires no further deliberation.

33. However, it would be with profit only to refer to a judgment of the Supreme Court in ***Raj Kumar alias Suman v. State (NCT of Delhi)***; AIR 2023 SC 3113, wherein the Bench had referred to a number of decisions on Section 313 Cr.P.C. and its importance and has very pithily summarized the requirements under the Code.



34. The Bench, after referring to the judgments in ***Tara Singh v. State: AIR 1951 SC 441; Shivaji Sahabrao Bobade v. State of Maharastra: AIR 1973 SC 2622; S. Harnam Singh v. State (Delhi Admn.): AIR 1976 SC 2140***, has summarized the law as follows:-

16. The law consistently laid down by this Court can be summarized as under:

(i) It is the duty of the Trial Court to put each material circumstance appearing in the evidence against the accused specifically, distinctively and separately. The material circumstance means the circumstance or the material on the basis of which the prosecution is seeking his conviction;

(ii) The object of examination of the accused under Section 313 is to enable the accused to explain any circumstance appearing against him in the evidence;

(iii) The Court must ordinarily eschew material circumstances not put to the accused from consideration while dealing with the case of the particular accused;

(iv) The failure to put material circumstances to the accused



amounts to a serious irregularity. It will vitiate the trial if it is shown to have prejudiced the accused;

(v) If any irregularity in putting the material circumstance to the accused does not result in failure of justice, it becomes a curable defect. However, while deciding whether the defect can be cured, one of the considerations will be the passage of time from the date of the incident;

(vi) In case such irregularity is curable, even the appellate court can question the accused on the material circumstance which is not put to him; and

(vii) In a given case, the case can be remanded to the Trial Court from the stage of recording the supplementary statement of the concerned accused under Section 313 of CrPC.

(viii) While deciding the question whether prejudice has been caused to the accused because of the omission, the delay in raising the contention is only one of the several factors to be considered."

35. The Trial Court, in this instance, has very



lightly dealt with the requirement under Section 313 Cr.P.C. and has practically put no incriminating circumstance to the appellants for him to answer.

36. Such scant attention to the statutory as also a salutary provision under Section 313 Cr.P.C. cannot be ignored. This in itself, I dare say, vitiates the conviction of the appellants.

37. The role of the informant in the present case is tainted with mendacity, which is evident from the very contents of the FIR itself. According to the prosecution, as narrated by the informant, the incident pertains to the alleged kidnapping of his son from his house to an unknown place. In his written statement, the informant averred that the appellants along with certain others participated in the said occurrence with the object of kidnapping, and that several villagers had also witnessed the incident. Furthermore, he alleged occurrence is stated to have taken place on 04.06.1999, whereas the FIR was lodged only on 21.06.1999. This inordinate delay of about seventeen days in lodging the FIR, remains wholly unexplained either in the FIR itself or in any material available on record. The FIR further reflects that the informant and four persons, namely, Badri Yadav, Arbind Yadav, Vedanand Yadav and Ramesh Kumar Yadav had witnessed the occurrence. However,



PW 1 categorically deposed that he only came to know of the kidnapping and thereafter informed the informant (PW2). It has also been admitted that PW-1 and PW-2 are related. This renders the prosecution version inconsistent, for if the FIR treats them all as eyewitnesses, the very question arises as to why the matter had to be communicated afresh by PW-1 to PW-2. The evidence unmistakably shows that PW-1 is not an eyewitness to the alleged incident, his knowledge is purely derivative and second-hand. Consequently, PW-2, being the ultimate recipient of this information, stands on no better footing. His testimony is hearsay in nature and thus unreliable as substantive evidence. There are several inconsistencies found in the evidence of PW-2 as well as PW-1 so far as initial version of prosecution story is concerned. Further, the statement adduced by PW-2 in the Court is quite inconsistent with the story of prosecution and inconsistencies are of such nature which creates serious dent in the prosecution story as initial version of prosecution story does not reflect that the source of information was based on the information given by PW-1 but during the course of evidence it is found that source of information for lodging the FIR is based upon the information shared by PW-1 to PW-2. In this way, initial version of PW2 is totally contradicted by the evidence



adduced by PW-1 and PW-2 himself. The inconsistency clearly indicates that the delay in lodging the FIR was utilized to prepare a suitable prosecution version in order to cover up the inherent lacunae. Even the manner in which the son of the informant was allegedly taken away, as claimed by witnesses, appears doubtful. Notably, no *sanha* entry was made, which casts further suspicion on the prosecution story. Such a deceptive and concocted approach cannot inspire confidence and does not constitute reliable evidence in law.

38. Apart from that, the manner in which the occurrence has been narrated by the informant and several sub stories have been dealt in the prosecution story connecting several villagers who were present at the time of occurrence and all are sharing information to the informant himself, then, the question arises if all are present at the place of occurrence what is the reason to share the information of alleged occurrence to the informant. More or less, all the prosecution witnesses are relative of informant except PW-4/ Vedanand Yadav. PW-1 himself has claimed that source of information is received by him regarding the alleged occurrence. At that juncture he is claiming to be an eye witness of the occurrence rather whatever the information regarding the kidnapping he has received, same



has been shared to the informant. If this is the basis of the prosecution story, then, the claim of informant that he is eye witness of the alleged occurrence is quite shaky as the source of information is shared by PW-1, who himself is not an eye witness of the alleged occurrence as his knowledge is purely derivative and second hand on the basis of his admission during cross examination. In that situation, none of the witnesses are eye witness of the occurrence, though, they are claiming to be eye witnesses of the occurrence, and if they are eye witnesses, then, the informant who is father of the victim might lodge the FIR on the alleged date of occurrence. Furthermore, number plate of motorcycle which has been used in kidnapping of informant's son has not been subjected to investigation. Another motorcycle has been used in the alleged occurrence by the other miscreants but they have also not been identified. These are several questions which are left unattended due to non examination of I.O.

39. On all counts from the analysis of evidence adduced during trial, it is crystal clear that the prosecution has failed to prove its case beyond reasonable doubt. The learned trial court fell in error of law as well as appreciation of facts of the case in view of settled criminal jurisprudence. Hence,



impugned judgment of conviction dated 26.03.2004 and order of sentence dated 29.03.2004 are hereby set aside. Accordingly, both the appeals stand allowed. Both the appellants are on bail. They are discharged from the liability of their bail bonds.

40. The interlocutory application, if any, also stands disposed of.

41. Let a copy of this judgment be transmitted to the Superintendent of the concerned jail for compliance and for record.

42. The records of this case be also returned to the concerned trial court forthwith.

(Alok Kumar Pandey, J)

alok/shahzad-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	27.09.2025.
Transmission Date	27.09.2025.

