

**IN THE COURT OF DISTRICT & ADDITIONAL
SESSIONS JUDGE-I-CUM-SPECIAL JUDGE**

Nalanda (Bihar Sharif), BIHAR

Presents -SANJEEV KUMAR SINGH

Date of Judgement -16th March 2026

SESSIONS TRIAL: 284/2018

Harnaut P.S. Case No. 73/2012

State of Bihar (Through Lalti Devi)

..... Prosecution

Versus

1. Dayanand Prasad S/O Prayag Prasad, aged about 55 yrs.

R/O-Lohra, P.S.-Harnaut, Distt.-Nalanda

2. Dharmendra Shukla S/O Late Narendra Nath Shukla, aged about
52 yrs.

R/O-Tharthawaliya, P.S.-Pachrukhi, Distt.-Siwan

.....Defense

Offenses U/SS : 364 & 120(B) IPC

Counsel for Prosecution: Sri Rana Ranjeet Singh, A.P.P.

Counsel for Defense: Sri Bhanu Pratap Bharti, Ld. Adv.

Judgement

1. Charge was framed on 27.02.19. Content of allegations was explained and made the accused understood in Hindi, who in turn, denied to have played any role in commission of the alleged offenses and claimed to face trial to prove their innocence.

2. Case of the prosecution in short is that informant's son Harendra Paswan worked as driver with accused Dayanand Prasad in lieu of monthly salary worth Rs.3,000. When he made demand of his due worth rs.30,000, accused called him on 04.10.20. Since then he did not come back so the informant has every apprehension that accused Dayanand in connivance with the co accused has disappeared his body after killing him.

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3.After investigating the matter, police submitted charge sheet against the accused and court took cognizance of the aforesaid offenses having sufficient materials to put the accused to trial. Subsequently the case was made over to this court in view of the offenses being triable by the Sessions Court.

4.As soon as accused appeared before the Court and charged, prosecution was called upon to adduce evidence in support of its case to prove the same beyond all reasonable doubts. To arrive at a logical conclusion it is necessary to have a thorough appreciation of the evidence available on the record.

Findings

5.It is evident from the record that Prosecution has produced and examined only two witnesses namely Ajeet Paswan and Pappu Kumar in the course of trial. The evidence adduced by these witnesses is to be taken into consideration for arriving at a logical conclusion.

6.Accused are put to trial for the offenses punishable u/ss 120(B) and 364 IPC. Section 364 IPC deals with kidnapping or abducting a person with the intent to murder or to put them in danger of being murdered. It involves enticing, forcibly carrying away, or detaining someone with the specific intent to cause death or put hin in danger of being murdered.

7.On the other hand section 120(B) deals with punishment for Criminal Conspiracy. As per section 120-A IPC, When two or more persons agree to do, cause to be done-(a) an illegal act, or (ii), an act which is not illegal by illegal means, such an agreement is designated a Criminal Conspiracy;

Provided that no agreement except an agreement to commit an offense shall amount to a criminal conspiracy unless some act besides the agreement is done by two or more parties to such agreement in pursuance thereof.

8.Originally, the IPC contained only two provisions by which conspiracy was made punishable. First, by provision of section 107, which made conspiracy by way of abetment punishable. The other was specific provisions involving offenses which included conspiracies to commit them, such as in the definition of a

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Thug(section 310), by way of belonging to a gang of dacoits(section 400) or thieves(section 401). But, in 1868, the English common law on conspiracy was widened with the judgment of the House of Lords in the well known case of **Mulcahy Vs. R**, in which it was ruled, “A conspiracy consists not merely in the intention of two or more but in the agreement of two or more to do an unlawful act by unlawful means. So long as such a design rests in intention only, it is not indictable. When two agree to carry it into effect, the very plot is an act in itself and the act of each of the parties promise against promise, actus contra actum capable of being enforced if lawful, punishable if for a criminal object or for the use of criminal means.”

9.The above case introduced the principle in common law that a mere agreement of two or more people to do an unlawful act by unlawful means was sufficient to attract liability under conspiracy, even specific overt act had not been committed. This development of the law in England found echo in the IPC, which was amended in 1870, in which the law of conspiracy was widened by the insertion of section 121-A,IPC making it an offense to commit any of the offenses punishable by section 121. Position changed again in 1913 when present sections 120-A and 120-B were incorporated in a separate chapter V-A, IPC. In nut shell, conspiracy is a substantive offense, which exists in the very agreement between two or more persons to commit a criminal offense, irrespective of the further consideration whether or not those offenses have actually been committed.

10.Now, coming to the case at hand it is evident that P.W.1 Ajeet Kumar has deposed that on 26.09.10 accused Dayanand Prasad came to his house and took away his brother Dharmendra Paswan to work as his driver before the eyes of his parents ram Pravesh Paswan and Lalti Devi. When his brother did not come back till 4-5 days, they went to ask about Dharmendra. But accused did not reply satisfactorily and drove them out from there. From perusal of his cross examination it transpires that there was preexisting dispute between Dharmendra and Dayanand regarding payment of money and both had filed cases against each other. He states further that both were in enmity since long back for that issue. But, there is no concrete proof of kidnapping or abducting on part of the accused. This witness has said or alleged nothing about the co accused Dharmendra Shukla.

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11. So far as the P.W.2 Pappu Kumar is concerned he has turned hostile and did not support the Prosecution's case. He denies to make any statement before the I.O. and has fully controverted his earlier statement when his attention was drawn by the I.O. Other crucial witnesses such as parents of the Dharmendra and I.O. etc. are not examined, so this case virtually is of no evidence

12. Prosecution is bound to prove its case beyond all reasonable doubts. It is well entrenched principle of criminal jurisprudence that a charge can be said to be proved only when there is certain and explicit evidence to warrant legal conviction and no person can be held guilty on pure moral conviction. Howsoever grave the alleged offence may be, otherwise stirring the conscience of the court, suspicion alone can not take place of legal proof. The well established canon of criminal justice is "fouler the crime higher the proof." Hon'ble Apex Court, in **Raj Kumar Singh@Raju@Batya Vs. State of Rajasthan, (2013)5 SCC 722** has clearly ruled that, "Suspicion, however grave it may be, can not take place of proof, and there is large difference between "may be" proved and "will be" proved. The mental distance between "may be" and "must be" is quite large and divides vague conjectures from sure conclusions.

13. In the case of **Yogesh Singh Vs. Mahaveer Singh & Ors.; AIR 2016 SC 5160** Hon'ble Supreme Court has laid down that, "It is cardinal principle of criminal jurisprudence that guilt of the accused must be proved beyond the shadow of all reasonable doubts. 'Reasonable doubt' means a fair doubt based on reason and common sense but which is free from a zest for abstract speculation. The law cannot afford any favorite other than truth. To constitute reasonable doubt, it must be free from an overemotional response. Doubts must be actual and substantial doubts as to the guilt of the accused persons arising from the evidence, or from the lack of it, as opposed to mere vague apprehensions. A reasonable doubt is not an imaginary, trivial or a merely possible doubt but a fair doubt based upon the reason and common sense which must grow out of the evidence in the case. Highest burden of proof in a criminal case, is placed normally on prosecution because under the common law accused is presumed innocent, his or her guilt must be proven to the entire satisfaction of the court.

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14. An adverse inference can be drawn against the accused only and only if the incriminating material stands fully established against him and he is not able to furnish any explanation for the same. Hon'ble Apex Court in **Sharad Birdhichand Sarda Vs. State of Maharashtra, AIR 1984 SC 1622** has held that when on the evidence two possibilities are available or open, one which goes in the favour of prosecution and other benefits an accused, the accused is undoubtedly entitled to the benefit of doubt.

Conclusion

15. In view of the facts and circumstances prevailed in the foregoing paragraphs Prosecution has miserably failed in proving its case beyond all reasonable doubts and this court has been left with no option other than to set the accused free.

16. Accordingly, both the accused above named are hereby acquitted of the charges leveled against them for the want of evidence and also they are discharged of the liabilities of the bonds along with sureties.

Dictated and Corrected by Me

**(Sanjeev Kumar Singh)
DASJ-I**

**(Sanjeev Kumar Singh)
DASJ-I**

Judgment was pronounced, signed and dated by me in the open court before all the accused.

**(Sanjeev Kumar Singh)
DASJ-I
Dated:16.03.2026**

Date of Judgment /Order	16th March 2026
Date of Reserving Judgment /Order	16th March 2026
Uploading Date	16th March 2026
Uploaded By	Ms. Sneha Kumari D.E.O

**(Sanjeev Kumar Singh)
DASJ-I-cum-Special Judge, Bihar Sharif
Date:16th March 2026**