

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No. 608 of 2013

Against the judgment of conviction dated 09.07.2013 and order of sentence dated 12.07.2013 passed by Shri Prabhu Nath Singh, 9th Additional Sessions Judge, Muzaffarpur in connection with Sessions Trial No. 434 of 2010/322/2012

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Md. Aainul @ Aainul Ansari @ Aainul Mian, Son of Late Abdul Gani, Resident of Village – Srisiya, Police Station – Kanti, District - Muzaffarpur

.... Appellant

Versus

The State of Bihar

.... Respondent

With

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Criminal Appeal (SJ) No. 558 of 2013

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Rajesh Kumar @ Rajesh Kumar Gupta, S/O Sri Madan Kumar Gupta, Resident of Village and P.S. Karja, P.O. Pratappur, District Muzaffarpur

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

(In CR. APP (SJ) No. 608 of 2013)

For the Appellant : Mr. Prabhakar Jha, Advocate

For the Respondent : Mr. S. N. Prasad, A.P.P.

(In CR. APP (SJ) No. 558 of 2013)

For the Appellant : Mr. Aaruni Singh, Advocate

For the Respondent : Mr. Binod Bihari Singh, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD

ORAL JUDGMENT

Date: 15-10-2015

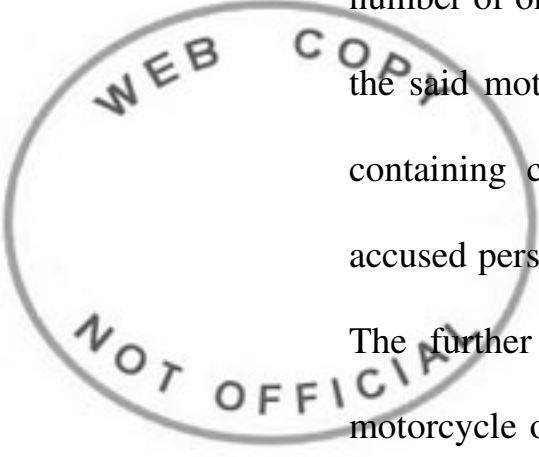
Heard learned counsel for the appellants and learned counsel for the State.

2. Both these appeals have been heard together and are being disposed of by this common judgment as they arise out of the same judgment of conviction dated 09.07.2013 and order of sentence dated 12.07.2013 passed by Shri Prabhu Nath Singh, 9th Additional Sessions Judge, Muzaffarpur in connection with Sessions Trial No. 434 of

2010/322/2012 arising out of Kurhani P.S. Case No. 55 of 2010.

3. The appellants have been convicted under Sections 395, 397 and 412 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs.10,000/- each and in default of payment of fine to undergo rigorous imprisonment for one month.

4. The prosecution case, as alleged in the First Information Report recorded on the basis of *fardbeyan* of one Arvind Kumar is that he is a business man of potato and onion in Hazipur Bazar Samiti and used to send his articles to Muzaffarpur Bazar Samiti, Karja and Motipur etc. On Tuesday i.e. 16.03.2010 as usual he proceeded from Hazipur to collect the dues from the dealer to whom he used to supply the articles, visited different places, collected his dues and reached Muzaffarpur Bazar Samiti and also collected his dues from Ganesh Potato Bhandhar, Muzaffarpur. Thereafter he proceeded for Hazipur along with Shiv Bhushan Jha by motorcycle. The entire collected money was to the tune of Rs.2,14,000/- which was kept in a black bag. At about 4:00 P.M. he reached near village Baliya (Fatehpur) under Fakuli O.P. In the meantime, one white colour Victa with pasted sticker of Vodafone overtook his vehicle and surrounded him by front side, and 2-3 criminals got down from the Victa, came to the informant and pointed pistol on him. In the meantime, four persons came on the two



motor-cycles, out of the two motorcycles the informant noted the number of one motorcycle bearing no. BR06M/0937 and the person on the said motorcycle came to Shiv Bhushan Jha and snatched the bag containing cash from him. When the informant protested then the accused persons fired from his pistol and fled away by the motorcycle. The further case is that the informant took out the key of one motorcycle on which accused persons had come and threw the key of the said motorcycle. The further case is that the informant and his staff made hulla then the persons in the nearby village collected but the accused persons on Victa fled away towards Hazipur but the person, who had got down from the motorcycle and looted the bag, remained engaged in getting his motorcycle started. In the meantime, the persons of the nearby villages collected and then the said criminal tried to flee away towards east of the road through the agricultural field along with the bag containing the money. The informant tried to obstruct the criminal fleeing with the bag but the accused persons pushed the informant leading to his fall. The further case is that the accused persons were 25-35 years old wearing pant and shirt. One criminal was of dark face and others were of wheatish and simple colour. They were using local language and during talk they were addressing one another as Aainul and Hussaini.

5. The *fardbeyan* was recorded by Nafees Ahmad, S.H.O.,

Phakuli O.P. on 16.03.2010. On the basis of *fardbeyan* the First Information Report was lodged. Police, during investigation, apprehended the accused along with a black bag and cash worth Rs.2,14,000/-. The seizure list was prepared with 19 notes of Rs.1000 denomination, 1382 notes of Rs.500 denomination, 1100 notes of Rs.100 denomination and 320 notes of Rs.50 denomination. During investigation, Test Identification Parade of the appellants was conducted. The confessional statement of the appellants was recorded before the police. The police after completing investigation submitted charge-sheet, cognizance was taken, case was committed to the Court of Sessions and after commitment of the case, charges were framed for the offences under Sections 395, 397 and 412 of the Indian Penal Code and after framing of charge, trial proceeded.

6. During trial, eight witnesses were examined by the prosecution. P.W.1 Subodh Bhagat has been declared hostile in view of his statement that he does not know about the occurrence.

7. P.W. 2 Bindeshwar Thakur is the seizure list witness and deposed that no seizure has been prepared before him, though he made his signature on the seizure list and proved his signature which has been marked as Exts.1 and 2 and also proved the signature of Kaushal Kishore Singh which has been marked as Exts.1/1 and 2/1 and Kaushal Kishore Singh had not made his signature in his presence but in cross-

examination he has deposed that he does not know about the preparation of seizure list.

8. P.W. 3 Kaushal Kishore Singh is also the seizure list witness and has also proved his signature on the seizure list which has been marked as Exts. 1/2 and 1/3 though he deposed that he did not know as to what was written in the seizure list and made signature on the plain paper.

9. P.W. 4 Arvind Kumar is the informant and collected the money worth Rs.2,14,000/- from the different dealers and while returning he and Shiv Bhushan Jha reached near Baliya Chowk at 4:00 P.M. overtaken by Victa, 2-3 persons got down and thereafter four persons on two motorcycles also came and snatched the bag. However, he has deposed that he took out the key of the motorcycle of the criminals and on his hulla, the people started collecting there but the Victa proceeded towards Hazipur. The one motorcycle also proceeded towards Hazipur but the person, who had snatched the bag, in course of starting the motorcycle so as to proceed towards east in the field was caught by the villagers. In the meantime, police also reached there, searched and seized the bag from his possession. The person caught disclosed his name as Aainul and his motorcycle was also seized. However, this witness in cross-examination deposed in paragraph 14 that he went to the police station on the same day and thereafter

collected the money and has seen the appellant Md. Aainul @ Aainul Ansari @ Aainul Mian in the police station. Thereafter Test Identification Parade was conducted in jail. He has further stated that he was not recognizing the appellant Md. Aainul @ Aainul Ansari @ Aainul Mian prior to the occurrence.

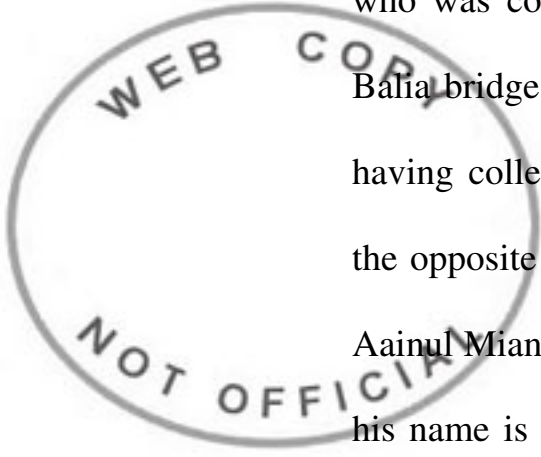
10. P.W.5 Shiv Bhushan Jha, is Munsif of the informant and the person, who was accompanying the informant at the time of occurrence. He also supported the prosecution case about the overtaking of his motorcycle, apprehension of the accused and snatching of the bag and then the informant took out the key of the motorcycle of the criminal, who was snatching the bag and the person on the Victa fled away towards Hazipur. He has further stated that the bag and the money, which were looted, are not in Court.

11. P.W. 6 Suraj Kumar is the brother of the informant and has deposed that he learnt about the loot of the money and thereafter he went to the police station and saw Md. Aainul @ Aainul Ansari @ Aainul Mian.

12. P.W. 7 Santosh Kumar, who is cousin brother of the informant, is a hearsay witness. He deposed that he received information on mobile about the loot of money and hence, he is not an eye-witness to the occurrence.

13. P.W.8 Md. Nafees is the Officer-in-Charge of Fakuli O.P.

and has stated that on information of robbery from the businessman, who was coming from Muzaffarpur, he proceeded and reached near Balia bridge where two motorcycles were lying and hundred persons, having collected, were saying that miscreants had fled away towards the opposite side of the road towards Deogan and P.W.8 apprehended Aainul Mian with the help of villagers. On inquiry it was disclosed that his name is Md. Aainul @ Aainul Ansari @ Aainul Mian and on his search Rs.2,14,000/- was recovered from his possession which was seized before the two independent witnesses i.e. Kaushal Kishore Singh and Bindenshwar Thakur and seizure list was prepared. Copy of the seizure list was given to the accused and the accused has also made his signature on the seizure list and the signature of the accused was proved on seizure list marked as Ext.1/5. The seizure list prepared was signed by the witnesses Kaushal Kishore Singh and Bindenshwar Thakur marked as Ext.1/6. Copy of the seizure list was given to the accused Aainul who also made his signature, marked as Ext.1/7. He has given the boundary of the place of occurrence where the motorcycle was found. He obtained the call details of Rajesh Kumar bearing SIM No. 9430216612 and SIM No. 9006701437, which belonged to Dohan Kahatoon, the wife of the appellant Aainul and found that on the date of occurrence there was talk between Dohan Kahatoon and the appellant Rajesh Kumar and he recorded the confessional statement of

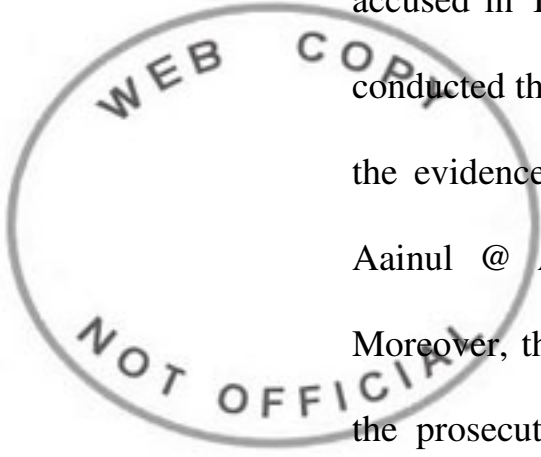


Rajesh Kumar.

14. The documentary evidence proved in the case is Ext.1 series which is the signature on the seizure list. Exts. 2 to 2/1 are the signatures on the formal First Information Report.

15. The learned counsel for the appellants, however, contended that the prosecution case as alleged by the informant in the First Information Report is that the accused persons overtook the motorcycle of the informant, surrounded him and snatched the bag with money worth Rs.2,14,000/- and the same was looted away. Thereafter the police came and recorded the fardbeyan. However, the informant in his evidence has stated that the appellant Md. Aainul, after snatching the bag, fled away and thereafter the villagers chased and caught hold of him. The case was instituted on the basis of the fardbeyan of the informant but the informant has neither stated that both the appellants were apprehended nor did he disclose the names of the accused in the First Information Report and hence, this part of the evidence is not acceptable. However, the appellants have been identified in Court but the informant has not mentioned that he participated in Test Identification Parade and identified the accused nor the Magistrate, who conducted the Test Identification Parade, has been examined nor the Test Identification chart has been proved. The informant deposed in paragraph 14 of his deposition that the Test Identification Parade was

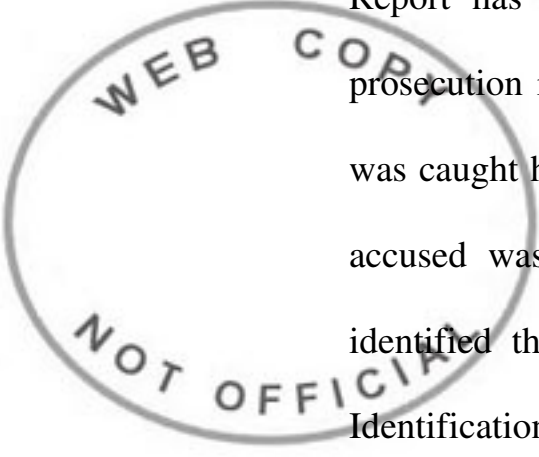
conducted in jail but he has not stated as to whether he identified the accused in Test Identification Parade or not, nor the Magistrate, who conducted the Test Identification Parade, has been examined. However, the evidence of the informant is that he has seen the appellant Md. Aainul @ Aainul Ansari @ Aainul Mian at the police station. Moreover, the entire prosecution story has been changed. The case of the prosecution in the First Information Report is that the accused persons fled away with the bag containing money. However, the informant in his evidence has stated that after snatching the bag the villagers chased and caught hold of the appellant, Aainul and the accused disclosed his name but the First Information Report is entirely silent regarding the name and apprehension of the appellants or even about the recovery of money, which was seized or about the Test Identification Parade, conducted, or the bag, in which money was recovered, was not produced in Court or about participation of the informant in Test Identification Parade of the appellants. Hence, though the First Information Report has been instituted against unknown, but neither the Magistrate has been examined, who conducted the Test Identification Parade nor the Test Identification Parade Chart has been proved nor the informant has proved that he identified the appellants in the Test Identification Parade nor the bag which was snatched and recovered has been identified nor they have been brought in Court to



prove that these were the articles which were seized during the investigation and identified by the informant as the bag and money belonging to him and hence, prosecution has not proved the case.

16. Learned counsel for the State, however, contended that when the appellants were already arrested and confessed their guilt and looted money Rs.2,14,000/- from the bag was recovered, it itself proved the case.

17. However, going through the respective submission and the evidence of the witnesses, especially the informant neither the bag containing money seized was produced in Court nor the same was identified nor the Test Identification Parade of the said bag was conducted and hence, it is difficult to hold that the bag which was looted away from the possession of the informant was the bag seized. The money was also not produced in Court nor identified nor even the bag, which contained the money, was brought in evidence and further the prosecution has given a complete go bye to the prosecution case in the First Information Report. The prosecution case in the First Information Report is that after looting the bag the accused persons fled away and the First Information Report has been lodged against unknown but in the evidence it has been stated by the informant that after chase, the appellant, Md. Aainul was caught and he disclosed his name. However, this is not the case of the prosecution. From the First



Information Report itself, it is apparent that the First Information Report has been registered against unknown and the case of the prosecution is that recovery of the articles was made and the accused was caught hold and the Test Identification Parade was held, in which accused was identified, but neither the informant deposed that he identified the appellants in Test Identification Parade nor the Test Identification Parade Chart proved rather the evidence is otherwise that he saw the appellants at the police station which gives a fatal blow to the Test Identification Parade and then as regards the informant's identification in Court, without proving Test Identification Chart, there is no evidence of acceptable identification of the appellant Rajesh Kumar @ Rajesh Kumar Gupta. There is no evidence except the confessional statement of the co-accused before the police and the other material is that there was telephonic talk with the mobile of the wife of the appellant Md. Aainul @ Aainul Ansari @ Aainul Mian. However, mere talk of the appellant Rajesh Kumar @ Rajesh Kumar Gupta on the mobile phone to the wife of Md. Aainul @ Aainul Ansari @ Aainul Mian itself is no proof to convict Rajesh Kumar @ Rajesh Kumar Gupta under Section 395 and 397 of the Indian Penal Code nor on these evidences he can be held guilty for an offence under Section 412 of the Indian Penal Code.

18. Hence, I find and hold that the prosecution has not been

able to prove the charges against the appellants beyond all reasonable doubts and the judgment of conviction dated 09.07.2013 and order of sentence dated 12.07.2013 passed by Shri Prabhu Nath Singh, 9th Additional Sessions Judge, Muzaffarpur in connection with Sessions Trial No. 434 of 2010/322/2012 are hereby set aside and the appeals are allowed. Since appellant Rajesh Kumar @ Rajesh Kumar Gupta, S/O Sri Madan Kumar Gupta, Resident of Village and P.S. Karja, P.O. Pratappur, District Muzaffarpur, of Cr. Appeal No. 558 of 2013 is on bail, he is discharged from the liability of his bail bond. Appellant Md. Aainul @ Aainul Ansari @ Aainul Mian, who is in custody, is directed to be released forthwith if not wanted in any other case.

(Gopal Prasad, J)

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