

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.290 of 2002

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1. Pappu @ Shoaib Ahmad @ Soyab Mian son of Abdul Kadir resident of Mohalla Bagh Malu Khan, PS. Chowk, Distt-Patna.

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

with

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Criminal Appeal (SJ) No. 395 of 2002

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1. Sheikh Abdullah son of late Md. Anish Resident of Mohalla Bagh Malus Khan, PS-Chowk, Distt-Patna.

2. Kalimullah @ Dewali son of Mohibullaha Resident of Mohalla Lodikatra, Nityanand ka kona P.S. Khajekalan, Distt- Patna.

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

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Appearance :

(In CR. APP (SJ) No. 290 of 2002)

For the Appellant/s : Mr. Aminuddin Ahmad Khan, Adv.
 Mr. Raj Dhar Sah, Adv.

For the State : Mr. Bipin Kumar, APP

(In CR. APP (SJ) No. 395 of 2002)

For the Appellant/s : Mr. Salahuddin Khan, Adv.
 Mr. Saurabh Kumar, Adv.

For the State : Mr. Sujeet Kumar Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 12-01-2015

Cr. Appeal (SJ) No. 290/2002 wherein Pappu @ Shoaib Ahmad @ Soyab Mian is the appellant while Cr. Appeal (SJ) No. 395/2001 wherein Sheikh Abdullah and Kalimullah @ Dewali are the appellants commonly originate against the judgment of conviction dated 11.06.2002 and order of sentence dated 12.06.2002 passed by 2nd Additional Sessions Judge, Patna in Sessions Trial No. 371/2000 whereby and whereunder all the appellants have been convicted for an offence punishable under Sections 412 IPC and each of them has been

sentenced to undergo RI for 7 years as well as fined of Rs. 3000/- in default thereof, to undergo SI for six months.

2. PW-2, Mahendra Paswan, a labour engaged under Patliputra Tobacco Company along with deceased, Ram Nagina Singh, a Salesman had gone to Patnacity for supply of cigarette as well as collection of dues on 27.02.1999, while they were returning over a pickup van fell prey at the hands of criminals who shot at Salesman, Ram Nagina Singh causing his instantaneous death as well as decamped with the sale proceeds.

3. On the aforesaid *Fard-e-beyan*, Khajekalan P.S. Case No. 28/99 was registered against unknown and during course of investigation, so many persons were apprehended from whose possession, as alleged, part of booty, on search, was seized including their inculpatory extra judicial confessional statement and being so, charge-sheet was submitted against them whereupon they faced trial and ultimately some of them met with ultimate result, the subject matter of instant appeals.

4. The defence case, as has been gathered from the mode of cross-examination as well as statement recorded under Section 313 of the Cr.P.C., that of complete denial of occurrence. They have also denied recovery being a part and parcel of booty, coupled with being their personal property.

5. In order to substantiate its case, the prosecution had examined altogether five PWs out of whom PW-1 is Bishwanath Sao



@ Binda Sah, PW-2 is Mahendra Sah, PW-3 is Havildar Hira Paswan, PW-4 is Dr. S.K. Roy Chaudhary who conducted postmortem over the dead body of Ram Nagina Singh and PW-5 is Lal Chand Ram, the Investigating Officer. Prosecution had also exhibited Ext-1 & Ext-1/2, Signature of Written report, Ext-2, Postmortem Report, Ext-3, Written report, Ext-4, FIR (Formal), Ext-5, 5/1 to 5/5, Seizure list. After going through the evidence available on the record, it is evident that on account of evidence of PW-4, Dr. S.K. Roy Chaudhary, the death of deceased Ram Nagina Singh due to fire arm injury is found proved. Accordingly, the evidence of PW-2, the informant who had categorically stated that during course of commission of dacoity the miscreants had shot at Ram Nagina Singh is found proved along with factum of dacoity as the defence did not opt to challenge the same.

6. During course of trial, the appellants were tried for an offence punishable under Section 396, 412 of the IPC. They have been acquitted for offence under Section 396 of the IPC in the background of deficiency persisting in the prosecution case due to non conduction of TIP, that means to say on account of absence of link in between.

7. After going through the judgment impugned as well as perusing the evidence of the PWs, it is apparent that similar kind of ailment is also persisting even so far case under Section 412 IPC is concerned.

8. Apprehension of appellants including others was on the

basis of a statement under Section 161 Cr.P.C. made by PW-1, Bishwanath Sao @ Binda Sah and as he resiled therefrom, hence the evidence lost its legal identity. Furthermore, the investigation was also faulty as the prosecution did not care to get the recovered article identified to be the subject matter, nor during course of trial, brought positive and concrete evidence to connect the seized article to be subject matter of occurrence. As stated above, PW-1 & PW-2 happen to be worthless on that very score. So far evidence of PW-5 is concerned, it is evident that he failed to disclose any connectivity with regard to money recovered from the possession of respective appellants to be part and parcel of the booty.

9. Consequent thereupon, mere recovery from the possession of the appellants could not be found hazardous to the appellants. Accordingly, the judgment of conviction and sentence recorded by the learned lower court is set aside. These appeals are allowed.

10. Since all the appellants are on bail, they are discharged from the liabilities of bail bonds.

(Aditya Kumar Trivedi, J)

Patna High Court
January 12th 2015
Perwez/AFR

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