

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.412 of 1992

Arising out of PS.Case No.-0015 Year-1990 Thana-Desari District- Vaishali at Hajipur

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1. Raj Narain Sahni @ Hulla Sahni, Son of Late Ganour Sahni, Resident of Village Bairai, P.S. Sarai, District Vaishali.
 2. Md. Qayum, Son of Md. Jabbar, Resident of Mohalla Bakai Sah Chowk, P.S. and District Muzaffarpur.

.... Appellants

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellants : None

For the Respondent : Shri Dilip Kumar Sinha, APP

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CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA

and

HONOURABLE SHRI JUSTICE AMARESH KUMAR LAL

ORAL JUDGMENT

(Per: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA)

Date: 05-01-2015

In spite of having requested the counsel to argue the appeal, there is a repeated request to us to adjourn the hearing. We are not inclined to grant any adjournment because of the shortness of the appeal.

2. The case relates to a dacoity allegedly having taken place in the house of Rajesh Rajak (P.W.3) in the night intervening the 26th and the 27th of February, 1990 in which P.W.5 Sonawati Devi was assaulted by the dacoits and her hand was fractured as appears from the evidence of P.W.7 Dr. Raj Kumar Sharma who had examined her in Primary Health Centre, Desari on 07.02.1990 at 4.30 A.M. Some household articles, like, an



eveready torch, nail cutter, some handkerchiefs, few ornaments and cash were taken away by the dacoits. As may appear from the evidence of P.W.10 Ram Nihora Thakur who had mainly investigated the case, two persons were found in suspicious conditions and they were arrested and from the search of their persons, a radio, a torch, a handkerchief and a few coins were recovered. Those were suspected to be the theft properties and were seized. This is how the two appellants were arrested and Test Identification Parade was held.

3. The Test Identification Parade was conducted by P.W.2 Sri Ram Pukar Rai, Judicial Magistrate, 1st Class, Hajipur in which two witnesses identified each of the two appellants. As regards the value of the evidence of a Test Identification Parade, we may refer to the evidence of P.W.5 Sonawati Devi one of the injured witnesses of the case as also to the evidence of P.W.4 Basmati Devi that some dacoits had been arrested and the news of their arrest was quite thick in the village. P.W.4 Basmati Devi categorically stated that she had not gone to see the dacoits (please see P.W.4, paragraph-22). P.W.5 Sonawati Devi had also stated that her son, i.e., the informant of the case Rajesh Rajak, had gone to see the dacoits at the police station (please see P.W.5, paragraphs-20, 21 and 22). Thus there is a strong probability that



after being arrested, the two appellants were shown to the identifying witnesses quite ahead of their participation in the Test Identification Parade. The evidence of identification as such fizzles out. As such, the conviction of the appellants under Section 395 of the Indian Penal Code is not sustainable and is, accordingly, set aside.

4. As regards the conviction of the appellants for offence under Section 412 of the Indian Penal Code less said is the better. The Investigating Officer himself, i.e., P.W.10 S.I. Ram Nihora Thakur admitted that in spite of having recovered the articles, no Test Identification Parade had been organized in respect of those respect to his knowledge (please see P.W.10, paragraph-34). Likewise, the witnesses to seizure, like, P.W.9 had stated that which article was recovered from which of the accused, he could not say. Thus, the evidence on point of recovery of the theft article is not only deficient but unacceptable. In fact there is no evidence on record to connect the recovered articles with the incidents of dacoity which had allegedly been taken place in the house of P.W.3. These are some of the frailties upon which the conviction of the appellants under Section 412 of the Indian Penal Code has also to be set aside.

5. Accordingly, the appeal is allowed. The

judgment of conviction dated 25.09.1992 and the order of sentence dated 28.09.1992, passed by the learned 4th Additional Sessions Judge, Vaishali at Hajipur in Sessions Trial No. 68 of 1992/7 of 1992 are hereby set aside. The appellants are acquitted of the charges, they had been held guilty of. Both of them are on bail. They shall stand discharged from the liabilities of their respective bonds.

(Dharnidhar Jha, J.)

(Amaresh Kumar Lal, J.)

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