

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.495 of 2011

Against the judgment of conviction, dated 14.03.2011, and order of sentenced dated 15.03.2011, passed by Mr. Vikram Singh, Additional District and Sessions Judge, Fast Track Court, III, Sheikhpura, in Sessions Trial No. 19A4 of 1995/Trial No. 27 of 2011

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1. Sato Ram @ Satendra Ram S/O Sitaram Ram R/O Village - Belaw, P.S. Barbigha, District – Sheikhpura	 Appellant
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Versus

1. The State Of Bihar	 Respondent
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Appearance :

For the Appellant : Mr. Bipin Kumar, Adv.

For the Respondent : Mr. S.A. Ahmad, APP

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CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD

ORAL JUDGMENT

Date: 17-09-2015

Heard the learned counsel for the appellant and the State.

2. The appellant has been convicted under Section 395 of the Penal Code and sentenced to undergo rigorous imprisonment for eight years and a fine of rupees two thousand and on non-payment of fine to undergo rigorous imprisonment for six months. He has, further, been convicted under Section 307 of the Penal Code and sentenced to undergo rigorous imprisonment for seven years and a fine of rupees one thousand and for non-payment of fine to undergo rigorous imprisonment for six months. However, it has been ordered that both the sentences shall run concurrently.

3. The prosecution case, as alleged in the first information report, instituted on the basis of fardbeyan of P.W. 7, Lala Pandey, recorded at 05.00 A.M. on 16.03.1991 alleging there that in between the night of 15th and 16th March, 1991, at about 01.00 A.M. the members of

the family of the informant made cry of 'dacoit-dacoit' on which he ran to his house, but, as soon as he reached there, he saw 3-4 miscreants standing at his darwaza and several dacoits entered into the house assaulted the female inmates of the house, ransacked and looted the articles. The informant also started crying dacoit-dacoit, thereafter, co-villagers Rampadarath Pandey, P.W. 6, Mithilesh Kumar Singh, P.W. 4, Shyam Sunder (not examined), Maheshwar Pandey, P.W. 2, also made cry of dacoit-dacoit. Further, case is that the dacoits came out of his house and flee away towards west. At the time the dacoits were receding, the above mentioned witnesses lit the torch. In the light of the torch, the informant along with other above mentioned persons identified amongst dacoits as Sato Ram @ Satyendra Ram and Nago Ram @ Narvat Ram, both sons of Sita Ram. Further, case is that the aforesaid witnesses starting chasing the dacoits. It is alleged that in course of chasing the accused, Sato Ram @ Satyendra Ram, exploded bomb causing injury to one Balmiki Pandey. Further, case is that the informant, thereafter, came to his house, then, his wife, Shanti Devi, P.W. 8, and his daughter, Renu Devi (not examined), disclosed that while they were looting articles in the room then about 10-15 dacoits entered into the house and assaulted them by lathi and paina and looted the article of the houses of Maheshwar Pandey and Vedmani Pandey as well as the house of the informant. She, further, disclosed that the dacoits were about 15-20 in numbers, all aged about 25-30 years and some were of short height and some were of appreciable height and had

covered their faces by galmochha, but, some were had opened face and out of said dacoits they had identified two and has given the details of article looted by the accused persons. Further, case is that three brothers live in same house along with their families.

4. On the fardbeyan, the first information report lodged and the investigation proceeded by the Assistant Sub Inspector of Police, S.S. Prasad.

5. During investigation the investigating officer recorded the statements of the witnesses, inspected the place of occurrence and after investigation submitted charge sheet and on submission of the charge sheet cognizance taken, case committed to the Court of sessions and, thereafter, the charge was framed and witnesses examined.

6. Altogether 10 witnesses were examined in this case. P.W. 1 is Sanjay Kumar, who has proved the formal first information report, marked as Exhibit 1. P.W. 2 is Maheshwar Pandey. He has deposed that he identified accused, Sato Ram and Narvat Ram in the light of the torch and has claimed that they had hurled bomb in dalan, taking the bomb from a bag having on shoulder. P.W. 3 is Shambhu Pandey and has come to support that while chasing the dacoits he identified the appellant and Narvat Ram and while chasing Sato Ram hurled bomb causing injury to Balmiki Pandey on his right hand as well as in knee. P.W. 4 is Mithilesh Kumar. He has stated that on hearing hulla of dacoits he went to the house of Lala Pandey and saw Sato Ram, Naga Ram and Laxman Ram along with looted articles, like Automated Teller Machine card and

others and claimed to have identified them in the light of the torch. However, this witness stated that one dacoit hurled bomb by which Balmiki Pandey got injured, but, he could not see who was the person who has hurled bomb. P.W. 5 is Umesh Prasad. He has come to depose that on hulla he got up and ran along with his torch and he saw that 15-20 dacoits along with looted articles like boxes etc are fleeing away. Out of them he identified five persons, including Satyendra Ram @ Sato Ram, Narvat Ram, Laxman Ram, Bharat Ram and, thereafter, they chased the dacoits and Satyendra Ram @ Sato Ram hurled bomb causing injury to Balmiki Pandey. He also claimed to have identified the dacoits in the light of the torch and claimed to have seen the remains of bomb on the land of Lala Pandey. He has, further, stated that he was armed with a torch of three cells, but, had not shown the torch to daroga and on the day of deposition also there was no torch before the Court. P.W. 6 is Ram Padarath Pandey. He also stated that on hulls of dacoit he proceeded along with torch and he saw 15-20 persons coming out of the house of Lala Pandey and also have found them coming with pety and bundles and has identified Sato Ram @ Satyendra Ram and Narvat Ram, then, the villagers chased them and then Sato Ram hurled bomb causing injury to Balmiki Pandey. P.W. 7 is the informant. He has also supported the prosecution case regarding the implication of the appellant having identified and then he entered into the house and his wife and daughter disclosed. He has, further, deposed that most of the accused persons have covered their faces and he could not identify the person

who had covered their faces. P.W. 8 is the wife of the informant and claimed that she identified the dacoits in the room in the light of the torch though she claimed that dacoits had snatched her torch. P.W. 9 is Rana Pratap, who has proved the formal first information report and the fardbeyan marked as Exhibits 1/1 and Exhibit 3 he has also proved the seizure list, marked as Exhibit 4 and seizure list of the looted articles, prepared by the Officer-in-Charge of Barbigaha Police Station. P.W. 10 is the medical officer, who examined Balmiki Pandey, Smt. Renu Devi and Shanti Devi.

7. The trial Court, taking into consideration the evidences of the witnesses, convicted the appellant and sentenced as mentioned above.

8. The defence of the accused persons as appears from the trend of cross examination and suggestion that the appellant is co-villager and Sato Ram and Narvat Ram were the labourers of the informant and labour charge having not been given and false implication has been levelled. The, further, defence is that Sita Ram is father of Narvat Ram and Sato Ram who has given land in sudvarna (mortgage) and they fell into the litigation due to the enmity. However, it is stated that the money of sudvarna had been returned and in consequence the paper of mortgage has already been returned. It has, further, been contended that the investigating officer has not been examined in this case. The means of identification had not been established and proved. The torch by which identification has been made has not been brought

on record and not proved. it has, further, been contended that there is specific case of the prosecution that some of the accused persons has covered their faces, but, the appellant though he was a co-villager had not covered his face and it has been submitted that it is, itself, absurd allegation that a co-villager go for dacoity without covering his face when allegation is that some accused had covered their faces, but, the appellant had not covered his face. It has, further, been contended that though the conviction has been recorded under Section 307 of the Penal Code and the allegation is that the bomb was hurled, but, the remains has neither been collected nor has been proved nor there is any report of the Forensic Science Laboratory about explosion of bomb, hence, contended that the merit of the case is not up to the mark to record connection.

9. The learned counsel for the State, however, contends that several witnesses have come to support the prosecution case and several persons have identified the appellant during course of dacoity, hence, prosecution has been able to establish the charge.

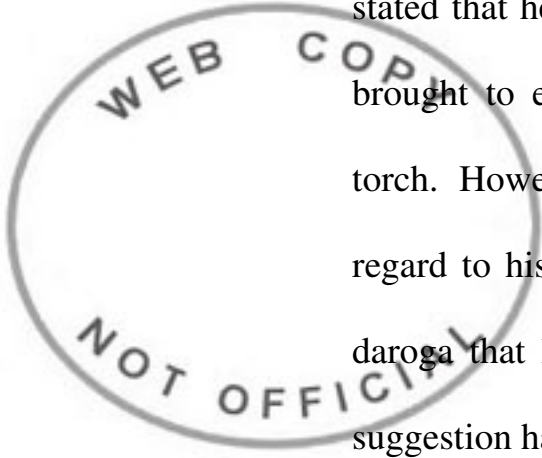
10. However, going to the respective submissions in the light of the evidence, adduced, I proceed to consider that whether the prosecution has been able to prove the charges and specially the most relevant consideration is whether the appellant has been identified as committing dacoity.

11. However, it is pertinent to mention that this is a case of dacoity and there is allegation in the first information report that the informant at once heard a cry of dacoit-dacoit of his family members

and, then, he got up and rushed to his darwaza and found darwaza closed and 3-4 miscreants standing at darwaza and several dacoits having entered and, thereafter, made a cry and others also made a cry and, then, accused persons, the dacoits, started fleeing away and it is stated that while the dacoits were fleeing away, the appellant was identified in the light of the torch. The, further, case is that while chasing the dacoits, one of the dacoits, namely, the appellant, Sato Ram @ Satyendra Ram, hurled bomb causing injury to Balmiki Pandey. The Doctor examined Balmiki Pandey and found injury on the palm and it has been claimed that the said injury caused by explosive substance. The most glaring feature of the case and most important point regarding the identification it is admitted that it was night, at about 01.00 A.M. and the accused persons claimed to have identified the appellant while he was fleeing away and he was identified in the light of the torch. However, the investigating officer has not been examined in this case. No torch has been produced by the prosecution by which they claimed to identify.

12. Going to the evidences of the witnesses, P.W. 2 has identified the appellant in torch light though he has stated that Sato Ram and Narvad Ram exploded bomb in dalan taking out bomb from a bag hanging on shoulder. However, the other witnesses have stated that they saw this appellant fleeing away along with a pety (box) and attaché. However, P.W. 3 also claimed to have identified the appellant in the light of torch, but, he has stated that the bomb was hurled while the accused persons were fleeing away and they were being chased by the

villagers. He also claimed to have identified the appellant in the light of the torch though this witness in his evidence in cross examination has stated that he has shown the torch of three cells to daroga has not been brought to evidence but, further, stated that daroga did not seize his torch. However, his attention has been drawn and suggestion made with regard to his statement and he has not stated that he has stated before daroga that he had identified the dacoits in the light of the torch. A suggestion has also been given, which has been denied that it is not a fact that he had identified the dacoits in the light of the torch of the dacoits. He has stated that some dacoits had covered their faces and some were not, hence, from the evidence of this witness, it is apparent attention of the witnesses drawn, but, the investigating officer not examined to record contradiction of P.Ws. 2 and 3 on two aspects that P.W. 2 has stated that the bomb was exploded in dalan and P.W. 3 has stated that the bomb was exploded while the accused persons were fleeing away and the villagers were chasing them. However, daroga has not been examined in this case, hence, the remains of the bomb exploded has not been established or proved nor any seizure list of the remains of the exploded bomb with specific reference of place has been prepared nor any report of the chemical laboratory or Forensic Science Laboratory regarding the explosion of bomb has been proved. The second aspect is the identification of the accused and attention has been drawn about the identification of the appellant by the witness in the light of the torch lit by them whereas the previous statement that he has stated before the



police that he identified the accused persons in the light of the torch of the dacoit, but, the investigating officer has not been examined to record contradictions and this has caused, again, prejudice to the appellant. P.Ws. 4, 5, 6 and 7 though have also claimed to have identified the accused persons in the light of the torch though P.Ws. 4, 5, 6 and 7 claimed to have identified the appellant in the light of the torch lit by them, but, the said torch has neither been given to daroga nor has been brought in evidence. More over, the fact that it has come in evidence that the dacoits had come and some had covered there faces and some had not, however, it has also been pointed out that the appellant is the co-villager and it is totally absurd that one having been co-villager whose land had been mortgaged to the informant and they were well known to each other, will come without covering the face for committing dacoity and more over, the fact that means of identification had not been proved, neither the torch had been given to the police nor the said torch was seized nor the torch was produced before the Court nor the investigating officer examined in the case, hence, means of identification had become doubtful.

13. Further, the charge is also there under Section 307 of the Penal Code and it is alleged that the appellant exploded bomb while he was chasing, but, having regard to the fact that the means of identification has been doubted and, further, the investigating officer having not been examined in this case and this followed with the fact that the remains of the exploded bomb was not collected neither the

seizure list prepared nor has been proved in evidence nor the remains of the exploded bomb was ever sent for chemical examination nor the report has been received or proved, hence, it is not proper to rely on the prosecution story about explosion of bomb when the explosion of bomb, itself, has not been proved by cogent and reliable evidence, then, conviction of appellant for offence under Section 307 of the Penal Code for his injury or attempt to kill becomes doubtful and the appellant is entitled for benefit of doubt. Hence, I give the appellant the benefit of doubt. The trial Court did not take into consideration these aspects.

14. Hence, order of conviction, recorded by the trial Court, is hereby **set aside** and the appeal is **allowed**.

15. Since, the appellant is in jail, he is ordered to be released on bail forthwith, if not wanted in any other case.

(Gopal Prasad, J)

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