

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.553 of 2002

Against the judgment of conviction and order of sentence dated 13.08.2002 passed by Sri Shanti Kumar, the learned Additional District & Sessions Judge, Fast Track Court 2nd, West Champaran (Bettiah) in Sessions Trial No. 312 of 1995.

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Rajendra Koiri, Son of Pateya Koiri, resident of Village-Chanpatia, P.S. Shikarpur,
District- West Champaran.

.... Appellant.

Versus

The State of Bihar

.... Respondent.

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Appearance :

For the Appellant : Mr. Ram Adya Singh, Advocate.
Mr. Arjun Prasad, Advocate.

For the State : Ms. Abha Singh, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD

ORAL JUDGMENT

Date: 27-07-2015

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

2. The appellant has been convicted for offence under
Section 412 of Indian Penal Code and sentenced to undergo rigorous
imprisonment for five years.

3. The prosecution case as alleged in the First Information
Report by informant Lal Babu Sah that on 06.05.1995 that 11.30 P.M.
about 20-22 dacoits came armed with Katha, Tangi, lathi and fire arms
and then surrounded the informant and asked to open the gate of the
house of the informant and 20-22 dacoits started broken the door.
Thereafter, they entered into the house broken open the door and

looted the articles and ransacked the house of the informant and in the meantime villagers learnt on Hulla and they collected and started brick batting and pelting stones upon the dacoits and they flee away. Thereafter, one dacoit was caught by chase and he disclosed the name of other co-accused Harendra Koiri. Further it is alleged that villagers assaulted the said dacoit Ramjee Prasad by which he succumbed to injury. Thereafter, it is alleged that various articles mentioned therein jewellery, cloths, blankets, kurta, pant, attachy, sarees total worth Rs.20,000/- were looted by the dacoits.

4. On the Fardbeyan F.I.R. was lodged. Cognizance was taken, charge framed under Section 395 of the Indian Penal Code. Police after investigation submitted charge sheet. During trial six witnesses were examined on behalf of the prosecution as P.W.1 Lal Babu Sah, P.W. 2 Urmila Devi, wife of the informant, P.W.3, Ashok Sah, son of the informant, P.W.4, Amar Das, P.W. 5 Dinesh Prasad Yadav and P.W. 6 Raj Kishore Sharma. P.W. 4, 5 and 6 all are co-villagers of the informant.

5. P.W. 4, 5 and 6 have been declared hostile. Neither I.O. has been examined nor the Magistrate who conducted T.I. parade has been examined. Documentary evidence adduced was proved as Exhibit-1.

6. The trial court, though, taking into consideration that no evidence has been adduced regarding T.I. parade and hence acquitted the appellant under Section 395 of Indian Penal Code and convicted

the appellant under Section 412 of Indian Penal Code solely on the ground that looted articles have been recovered from the house of the appellant and the informant has himself identified those looted articles to hold the guilty under Section 412 of Indian Penal Code.

7. Learned counsel for the appellant however, submits that neither the police officer who recovered the looted articles has been examined nor there is any evidence who recovered the looted articles from the possession of this appellant. There is no evidence that any T.I. parade was conducted of the looted articles recovered or identified, neither the Magistrate before whom T.I. parade was conducted has been examined, nor T.I. chart has been proved or brought in evidence, nor witnesses even claims about recovery of the looted articles from this appellant nor they have been identified the articles, nor articles even placed in the court. Hence there is total lack of evidence and trial court misdirected himself convicted the appellant without any material on record.

8. However, from perusal of the record, it appears that only material Exhibit marked as Annexure-1 signature of Lal Babu Sah on the First Information Report.

9. From the case of the prosecution as alleged in the First Information Report, this appellant has not been even named in the First Information Report and one Ramjee Prasad was apprehended at the place of occurrence by the villagers while chasing the dacoits and he disclosed the name of Harendra Koiri. However, Ramjee Prasad



was beaten to death. P.W. 1, Lal Babu Sah, though, in his evidence in paragraph 3 has stated that looted articles were recovered and seized from the house of Rajendra Koiri. He has also stated that Rajendra Koiri who is in the dock has denied the allegation for recovery of articles from his house. Further P.W. 1 in his cross-examination in paragraph 6, has specifically stated that no article from the house of Rajendra Koiri was recovered before him. Hence from this evidence, it is apparent that this witness is not an eye witness with regard to recovery of looted articles from the possession or from the house of the appellant. He has further stated that he did not identify any accused in jail. He has not further stated before police that looted articles were recovered from the house of Rajendra Koiri. He has stated that police has disclosed about recovery of articles. Hence from his evidence, it is apparent that he learnt recovery of articles from the house of Rajendra Koiri by the police. Hence, his evidence regarding recovery of looted articles is hearsay evidence and is not admissible in evidence. There is no evidence that he participated any T.I. parade with regard to looted articles, though, he has stated that he identified 'Chadar' but in his cross-examination has stated that where articles were kept there was only one green chadar and no other chadar (bed sheet) was there.

10. P.W.2 is wife of the Informant. She has stated in her evidence that she participated in T.I. parade, but she did not identify the articles. P.W. 3 is son of the informant, Ashok Sah has

specifically stated that he did not identify any articles. Hence P.W. 4, 5 and 6 have been declared hostile. Hence from this evidence, there is no specific evidence regarding recovery of looted articles from the house of the appellant. Further there is no evidence regarding seizure list having been prepared, neither any seizure list has been proved, though, P.W. 1 stated that he identified the “Chadar” but that chadar was not placed for identification with any similar nature of ‘Chadar. However, this identification is meaningless without any evidence. Further no T.I. parade having been conducted as neither I.O. has been examined nor Magistrate who conducted T.I. parade has been examined, neither any looted articles have been recovered from the house of appellant nor there is any evidence of T.I. conducted regarding looted articles nor there any evidence of seizure list having been prepared. Hence there is no iota of evidence to prove charge under Section 412 of Penal Code.

11. Hence, conviction and sentence recorded by the trial court for offence under Section 412 I.P.C. is not sustainable and is hereby set aside. The appeal is allowed. The appellant discharged from the liabilities of his respective bail bond.

m.p.
N.A.F.R.

(Gopal Prasad, J)

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