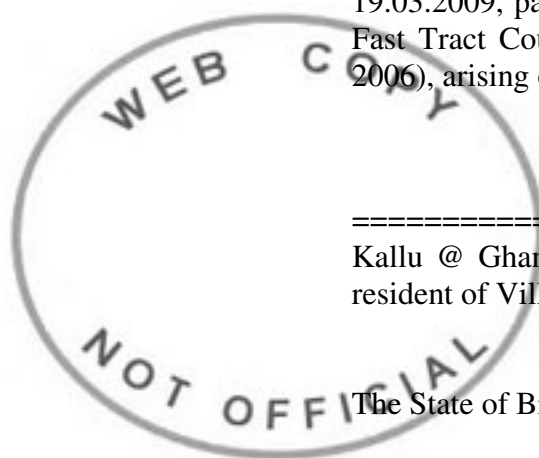




IN THE HIGH COURT OF JUDICATURE AT PATNA

(Against the judgment of conviction dated 16.03.2009 and order of sentence, dated 19.03.2009, passed by Shri Krishna Mohan Srivastava, Additional Sessions Judge, Fast Tract Court No.-I, Patna in Sessions Trial No. 937 of 2006 (Tr. No. 66 of 2006), arising out of G.R.P. P.S. case No. 188 of 2006, G.R. No. 248 of 2006)

Criminal Appeal (DB) No.378 of 2009

=====

Kallu @ Ghanshyam Pandit @ Ghanshyam Kumar, Son of Ram Saroop Prasad, resident of Village- Dariyapur Gola, P.S.- Kadam Kuan, District- Patna.

..... Appellant.

Versus

The State of Bihar

..... Respondent.

With

=====

Criminal Appeal (DB) No. 416 of 2009

=====

Amit Kumar @ Amitabh Bachan, Son of Sri Siya Saran Rai, Resident of Manoharpur, Kachuara, Butai Tola, Police Station- Gauri Chak, District- Patna.

..... Appellant.

Versus

The State of Bihar

..... Respondent/s

With

=====

Criminal Appeal (DB) No. 435 of 2009

=====

Ranjeet Kumar Sinha @ Gulshan, son of Sidheshwar Prasad Sinha, resident of Vilage- Chandra Akhauri, Police station- Muffasil, District- Bhojpur (Ara).

..... Appellant.

Versus

The State of Bihar

..... Respondent.

With

=====

Criminal Appeal (DB) No. 437 of 2009

=====

Monu Kumar, Son of Rameshray Pandit, resident of Village- Bihta, Police Station- Khijarsaray, District- Gaya.

..... Appellant.

Versus

The State of Bihar

..... Respondent.

With

=====

Criminal Appeal (DB) No. 440 of 2009

=====

Ajay Kumar Yadav, Son of Ajit Yadav, resident of Village- Rampur Bakhari, P.S. Dholi Sakara, District- Muzaffarpur.

..... Appellant.

Versus

The State of Bihar

..... Respondent.

With

Criminal Appeal (DB) No. 441 of 2009

Subodh Kumar, son of Nagendra Prasad, resident of Village- Biharsharif (Kalyanpur), Police Station- Biharsharif, District- Nalanda.

..... Appellant.

Versus

The State of Bihar

..... Respondent

With

Criminal Appeal (DB) No. 430 of 2009

Nirmal Kumar Sinha @ Bittu, Son of Sri Vishwanath Prasad Sinha, Resident of Nehru Tola, P.S.- Chowk, District- Patna.

..... Appellant.

Versus

The State of Bihar

..... Respondent.

Appearance :

(In CR. APP (DB) No. 378 of 2009)

For the Appellant/s : Mr. Vikram Deo Singh, Advocate

For the Respondent/s : Mr. S. N. Prasad, Addl. P.P.

(In CR. APP (DB) No. 416 of 2009)

For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate

Md. Imteyaz Ahmad, Advocate

Mr. Ravi Ranjan, Advocate

For the Respondent/s : Mr. A. K. Sinha, Addl. P.P.

(In CR. APP (DB) No. 435 of 2009)

For the Appellant/s : Mr. Vikram Deo Singh, Advocate

For the Respondent/s : Mr. S. N. Prasad, Addl. P.P.

(In CR. APP (DB) No. 437 of 2009)

For the Appellant/s : Mr. Siv Shankar Pd. Singh, Advocate

For the Respondent/s : Mr. S. N. Prasad, Addl. P.P.

(In CR. APP (DB) No. 440 of 2009)

For the Appellant/s : Mr. Rajeev Ranjan, Advocate

For the Respondent/s : Mr. S. N. Prasad, Addl. P.P.

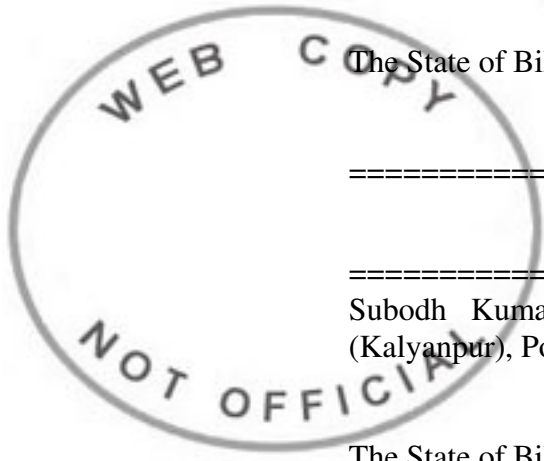
(In CR. APP (DB) No. 441 of 2009)

For the Appellant/s : Mr.

Mr. Akhauri Kamal K. Sahay

For the Respondent/s : Mr.

(In CR. APP (DB) No. 430 of 2009)



For the Appellant/s : Mr. Pramod Kumar Singh, Advocate
For the Respondent/s : Mr. Ajay Mishra, Addl. P.P.

=====

CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

and

HONOURABLE MR. JUSTICE AMARESH KUMAR LAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH)

Date: 25-08-2015

All these appeals have been preferred against the common judgment of conviction, dated 16.03.2009, and order of sentence, dated 19.03.2009, passed in Sessions Trial No. 937 of 2006 (Tr. No. 66 of 2006), arising out of G.R.P. P.S. case No. 188 of 2006, G.R. No. 248 of 2006, whereby the learned Additional Sessions Judge, Fast Tract Court No.-I, Patna has convicted all the appellants under Sections 396 and 396/412 of the Indian Penal Code and sentenced each of them to Rigorous Imprisonment for life and a fine of Rs.5,000/- (Five thousand) each under Section 396 of the Indian Penal Code and in default to undergo further simple imprisonment for six months, whereas no separate sentence was passed for the offence under Sections 396/412 of the Indian Penal Code.

2. The prosecution case in short as made out in the self-statement Alok Kumar Singh, officer-in-charge of G.R.P. Police Station, Patna recorded on 04.06.2006 at 4:30 P.M. at village Dhelwa, P.S. Phulwarisarif, District- Patna, is as follows:

On 04.06.2006, the informant was working in his office. At



about 1.00 P.M., he received a telephonic information that some occurrence has taken place in AC Bogie of Train No. 2142 Up Lok Manya Tilak Super Fast Train. On receipt of the information, he immediately made a Station Diary entry. He also informed the higher officials and proceeded to platform No.4 along with other police personnel, as the train was to arrive at platform no.4. On arrival of the train, he proceeded to AC 1st Class Bogie and saw one person at the gate of the Coach, who disclosed his name as Sandeep Kumar, who had caught a person whose clothes were stained with blood. On being asked, Sandeep (P.W. 4) disclosed the name of the apprehended person as Ranjeet Kumar Sinha @ Gulshan. He (P.W. 4) informed that the apprehended accused, namely, Ranjeet Kumar Sinha @ Gulshan along with his 5-6 associates had committed dacoity on the point of pistol and knife, as soon as the train started from Rajendra Nagar Terminal Station. One of the passengers, who resisted, was shot upon, is lying in the coach having sustained grievous injury. The apprehended accused Ranjeet Kumar @ Gulshan confessed his guilt and disclosed the name of other associates as Subodh, Amit, Ajay, Monu, Bittu and Kalu @ Ghanshyam, who succeeded in fleeing with looted articles. Sandeep Kumar claimed that he can identify accused on seeing them. The accused Ranjeet Kumar made his confessional statement giving the details of the occurrence. In his confession, he



stated that accused Ajay, Monu, Kallu @ Ghanshyam and Bittu were armed with pistol, Amit was armed with Khukhari, Subodh was armed with knife while he (Ranjeet Kumar) himself was having Chaku, which he threw while fleeing, just after the occurrence. He stated that in course of dacoity, one passenger tried to catch them but Bittu fired upon the passenger causing injury, as a result of which he fell down. Soon thereafter accused Ajay disjoined vacuum of the train and all of them got down and started fleeing. However, he (Ranjeet Kumar) was caught by passengers, whereas the other accused persons succeeded in fleeing with looted articles. Ranjeet Kumar further revealed that as per plan, they had to assemble in village Dhelwa, where they were residing in a rented house. The informant had identified the injured as Anil Kumar Singh, who was a retired D.I.G. of Police. The passengers of the coach were interrogated. One of the passengers, namely, Arvind Kumar Singh (P.W. 1) stated that his watch and Nokia Mobile set of 3230 Model bearing Sim No. 9892750120 was looted. Surendra Prasad (P.W. 2) another passenger informed that his Nokia Mobile was also looted. However, he has removed the sim and handed over to his family members at the Station. Another passenger, namely, Meena Devi, wife of Surendra Prasad, stated that 6-7 miscreants committed dacoity in the bogie on the point of pistol and Chaku. Another passenger, namely, Jaini Sinha,



also revealed that his Mobile set was looted. One golden ear top of passenger Shobha Devi was also looted. The informant seized the blood stained clothes of accused Ranjeet Kumar and prepared its seizure list. Soon thereafter he along with S.I. R. P. Verma, S.I. Arun Kumar and armed forces proceeded for village Dhelwa along with accused Ranjeet Kumar at about 2.30 P.M. on indication of accused Ranjeet Kumar, the informant raided the double storied house in presence of two independent witnesses, namely, Man Singh (P.W. 7) and Laltoo Sah (P.W.6) and apprehended five persons, who disclosed their names as Monu Kumar, Ajay Kumar, Kallu @ Ghanshyam, Subodh Kumar and Amit Kumar. On search, one loaded country made pistol was recovered from the possession of Monu Kumar, one loaded country made Katta (Pistol) was also recovered from the possession of Ajay Kumar and Kallu Kumar. One Nokia Mobile set bearing IMEI No. 355022000658877 and another Nokia Mobile set model no. 3230 bearing IMEI No. 355694008488948 and one spring knife were recovered from the possession of Subodh Kumar. One Khukhari (Chhura) was recovered from the possession of Amit Kumar. The accused persons did not produce any papers in respect of their arms and mobile phones, rather they confessed their guilt. They stated that accused Bittu had come to the house after the occurrence and fled away after changing his dress, because his clothe was stained with

blood. His clothe was kept in a bucket full of water and his 'Banian' was recovered from a peg in the bath room. The informant thereafter went in the bath room and seized the clothes. Due seizure was made of all these items. The informant forwarded the seizure list of fire arms along with memorandum sent to Phulwarisharif police station having local jurisdiction. He also received telephonic information that injured Anil Kumar Sinha succumbed to his injuries on way to the hospital.

3. On the self-statement of Alok Kumar Singh, Patna GRP P.S. case No. 188 of 2006 dated 04.06.2006 was registered under Sections 396 of the Indian Penal Code against the seven named accused persons.

4. The case was handed over to Satya Narayan Kumar, Rail Dy.S.P. (H.Q.) for investigation. After investigation, he submitted charge-sheet under Section 396/412 against all the accused persons showing Nirmal Kumar Sinha @ Bittu as absconder. Cognizance of the offence was taken on 10.07.2006 against all the seven accused persons under Sections 396/412 of the Indian Penal Code. As Nirmal Kumar Sinha @ Bittu was absconding, his case was separated by the committing Court vide order dated 24.07.2006 and the original recorded was committed to the Court of Sessions on 25.07.2006 giving rise to S.T. No. 937 of 2006. In the meantime, accused Nirmal



Kumar Sinha @ Bittu was apprehended on 23.08.2006 and the supplementary case record was committed to the Court of Sessions on 04.09.2006 by the Railway Magistrate, Patna, which was numbered as S.T. No. 1097 of 2006. Charges were framed under Sections 396/412 of the Indian Penal Code against six accused persons other than the Nirmal Kumar Sinha @ Bittu and a separate charge under Section 412 of the Indian Penal Code was framed against Kallu @ Ghanshyam Pandi @ Ghanshyam Kumar and Subodh Kumar. Charges were also framed against Nirmal Kumar Sinha @ Bittu on 30.10.2006 under Sections 396 and 412 of the Indian Penal Code, to which the appellants pleaded not guilty.

5. The prosecution in support of its case examined 15 witnesses. P.W. 1 is Arvind Kumar Singh, P.W. 2 is Surendra Prasad, P.W. 3 is Manju Singh, P.W. 4 is Sandeep Kumar, P.W. 5 is Deepak Kumar Singh, P.W. 6 is Laltu Sao, P.W. 7 is Man Singh, P.W. 8 is Ramesh Prasad Verma, P.W. 9 is Arun Kumar Singh, P.W. 10 is Dr. Arun Kumar Singh, P.W. 11 is Rama Shankar Singh, P.W. 12 is Alok Kumar Singh, P.W. 13 is Satya Narayan Kumar, P.W. 14 is Sheo Narayan Singh, and P.W. 15 is Dinesh Kumar. The prosecution also produced a number of documents in support of its case.

6. On the other hand, the defence also examined 10 witnesses in support of their innocence. D.W. 1 is Anil Kumar, D.W.

2 is Rajiv Kumar, D.W. 3 is Ramesh Mishra, D.W. 4 is Sanjay Kumar, D.W. 5 is Indra Raj, D.W. 6 is Bishwanath Prasad Sinha, P.W. 7 is Manju Devi (Soni Devi), D.W. 8 is Deep Narayan Singh, D.W. 9 Amit Kumar, and D.W. 10 is Avinash Kumar.

7. The statement of the appellants under Section 313 of the Cr.P.C. were complete denial of the occurrence and the involvement in the crime. The trial court on consideration of materials on record convicted the appellants under Sections 396 as well as 412 Indian Penal Code and sentenced them to undergo R.I. for life and a fine of Rs.5,000/- each under Section 396 of the Indian Penal Code. As noticed earlier in the judgment, no separate sentence was passed under Section 412 of the Indian Penal Code.

8. Being aggrieved, the appellants filed seven separate appeals, which are being heard and disposed of by this common judgment.

9. The prosecution in order to bring home the charge against the appellants have examined as P.W.1, P.W.2, P.W.3 as eye witnesses of the occurrence. P.W. 4 (Sandeep Kumar) is a corroborative witness. P.W. 5 Deepak Kumar Singh is the landlord of the premises, in which the accused persons are said to have taken on rent. P.Ws. 6 and 7 are seizure list witnesses to the seizure of arms and looted articles from the house of Deepak Kumar Singh, which is



said to be taken on rent by the appellants. P.W.4, P.W.5 and P.W. 6 have turned hostile. P.W. 4, P.W. 5 and P.W. 6 denied that the accused were his tenants and any seizure was made in their presence. P.W. 8 and P.W. 9, namely, Ramesh Prasad Verma, S.I. and Arun Kumar Singh S.I. are the members of the raiding party, which raided the rented premises of the accused at village Dhelwa. P.W. 10 is Dr. Arun Kumar Singh, who conducted post-mortem on the body of the deceased. P.W. 11 is a Judicial Magistrate and a formal witness. P.W. 12 Alok Kumar Singh is the informant of the case, whereas P.W. 13 Satya Narayan Kumar, Rail Dy.S.P. is the investigating officer of the case. P.W.14 Sheo Narayan Singh has proved the material Exts., whereas P.W. 15 Dinesh Kuamr is a Sub-Inspector of Police, who recorded the confessional statement of Nirmal Kumar Sinha @ Bittu.

10. As noticed in the preceding paragraph, the prosecution has produced P.W. 1, P.W.2, and P.W. 3 as eye witnesses of the occurrence. P.W.1 and P.W.2 are the co-passengers traveling in the train on the fateful day along with deceased Anil Kumar Singh. P.W. 3 Manju Singh is the wife of the deceased. All these three witnesses have supported the factum of occurrence in the AC coach of Lok Many Tilak Express, which started from Rajendra Nagar Terminal for Mumbai. All of them stated that as soon as the train started from Rajendra Nagar Station, 6-7 accused persons boarded the train and at

the point of pistol and Chhura started looting the passengers. One of the passengers resisted and had caught an accused. However, he was shot at by one of the accused causing grievous injury, which turned fatal.

11. P.W. 1 in his evident stated that the accused persons have snatched his Nokia Mobil bearing Sim no. 9892750120. The Mobile had the model no. 3230. He stated that some persons resisted the accused persons and in course of which firing also took place. Soon thereafter the train stopped and the accused persons escaped. When the train reached Patna Junction, he found that one of the accused has been caught and there was blood stains on his clothes. The name of the apprehended accused was Ranjeet. After some time, he came to learn that all the looted articles have been recovered. He also learnt that in A/1 coach, former D.I.G. was traveling, who in course of resistance sustained one firearm injury. He stated that he is not able to identify all the accused persons. However with some hesitation, he identified Subodh Kumar, as one of the accused, who participated in the alleged dacoity.

12. P.W. 2 is also a co-passenger. He was traveling in AC coach. He too has supported the prosecution. He stated that the accused persons took away his Nokia Mobile. He too heard sound of firing and later on learnt that the accused persons have shot at one of

the passengers. He, however, did not claim to identify any of the accused persons.

13. P.W. 3 Manju Singh is the wife of the deceased. Her presence in the Coach is not in dispute. She reiterated the prosecution case. She stated that as soon as the train started from Rajendra Nagar Terminal Railway Station, 6-7 persons entered into the AC compartment. They were looting the belongings of the passengers. They were armed with gun and knife. Her husband in the scuffle caught two of the accused persons. However, one of the accused, who was standing at the gate open fire, which hit her husband on the chest. Her husband still held the two accused persons, but because of further assault on his head, the grip loosened and the accused persons managed to flee. She stated that the clothes of her husband had got stained with blood and the clothes had become wet. Her husband was alive when the train stopped at Patna Junction. She stated that her Sari too had blood stains on it. She stated that one of the accused was caught, which was handed over to police at Patna Railway Station. Her husband was immediately carried to P.M.C.H. for treatment where he was declared dead. According to this witness, the accused were in the age group of 17-19 years. She identified Nirmal Kumar Sinha @ Bittu, as the accused, who had fired upon her husband in the court.



14. The prosecution, apart from these three eye witnesses also examined Sandeep Kumar (P.W.4). He stated that on 04.06.2006, he traveled from Bakhtiyarpur to Patna by Baijnath Dham Kashi Express. At about 1.00 P.M., his train too stopped near Kathpull between Rajendra Nagar and Patna Junction. He saw three persons fleeing from the Coach of Lok Manya Tilak Super Fast, which was standing on a parallel line north-east train. He along with other passengers chased the three accused, who had pistols and knife. The clothes of one of them had blood marks. This witness succeeded in catching one of the three accused, who disclosed his name as Ranjeet Kumar @ Gulshan. P.W. 4 after catching him brought back in the AC coach of Lok Manya Tilak Super Fast and handed him over to the GRP police on arrival at Patna Junction. He stated that he learnt about the story from the passengers and the confession made by Ranjeet Kumar.

15. The evidence of the doctor and the post-mortem supports the prosecution case that the deceased Anil Kumar Singh died on account of gun shot injury. The time elapsed since death mentioned in the post-mortem report tallied with the prosecution case. The defence has not disputed the incident on the relevant date and time.

16. On the basis of the oral evidence as well as medical

evidence, Mr. Satya Narayan Singh, learned Additional Public Prosecutor, appearing for the State submits that there are sufficient evidence for bringing home the charge under Section 396 and 412 of the Indian Penal Code against the accused-appellants.

17. The common case of the defence is denial of their involvement in the alleged crime. They do not dispute that there was a dacoity in Lok Manya Tilak Express and in the scuffle one of the passengers, namely, Anil Kumar Singh, sustained firearm injuries. However, they deny their involvement in the crime. They submit that the police have falsely implicated in the instant case in order to show that they have been able to solve the case. They denied that they have taken the premises of Deepak Kumar Singh on rent at village Dhelwa. They stated that they have their own house and as such there was no occasion for them to take the house of Deepak Kumar Singh (P.W. 4) on rent. They stated that nothing was recovered from their possession and the seizure witnesses had not supported the seizure of the arms and the looted articles from their possession.

18. We have heard the counsel for the parties. We would now examine individual appeals in the light of the pleadings and the materials available on the record. We find that during the pendency of the appeals, two of the appellants, namely, Ranjeet Kumar Sinha @ Gulshan (the sole appellant of Cr. Appeal (DB) No. 435 of 2009) and



Monu Kumar (the sole appellant of Cr. Appeal (DB) No. 437 of 2009) claimed to be juvenile on the date of occurrence. This Court, as such, directed the Juvenile Justice Board to enquire, whether the appellants were juvenile on the date of occurrence vide order dated 11.09.2012. After enquiry, the Juvenile Justice Board opined that the two appellants were juvenile on the date of occurrence. This Court as such vide order dated 22.10.2013 released Ranjeet Kumar Sinha @ Gulshan (the sole appellant of Cr. Appeal (DB) No. 435 of 2009) on bail whereas the other appellant, namely, Monu Kumar (the sole appellant of Cr. Appeal (DB) No. 437 of 2009) was granted bail vide order dated 18.12.2012.

19. As the two appellants were juvenile on the date of occurrence, in our view they ought not to have been tried along with adults, rather the trial should have proceeded in accordance with the rules of 'Enquiry' prescribed under the Juvenile Justice Board. We further find that both the appellants in fact had remained in custody for more than 6 ½ years, which is more than the maximum period of three years that a juvenile can be awarded. Now that they have become adult and more than 9 years have elapsed since the date of occurrence, we find it inappropriate to subject them to further enquiry under the Juvenile Justice Act. In the result, the impugned judgment of conviction under Section 396 and 412 of the Indian Penal Code, so

far as these two appellants, namely, Ranjeet Kumar Sinha @ Gulshan (the sole appellant of Cr. Appeal (DB) No. 435 of 2009) and Monu Kumar (the sole appellant of Cr. Appeal (DB) No. 437 of 2009) are concerned, are set aside. Both the appellants are on bail, they are discharged from the liabilities of their bail bonds.

20. Now we will consider the case of Kallu @ Ghanshyam Pandit (appellant of Cr. Appeal (DB) No. 378 of 2009), Amit Kumar @ Amitabh Bachan (appellant of Cr. Appeal (DB) No. 416 of 2009) and Ajay Kumar Yadav (appellant of Cr. Appeal (DB) No. 440 of 2009), as most of the grounds raised are common in all the three appeals, as they have not been identified by any of the witnesses.

21. Mr. Satya Narayan Prasad, learned counsel for the State submits that there was recovery of pistol and mobile from Kallu @ Ghanshyam Pandit and there was also recovery of pistol from Ajay Kumar Yadav and there was recovery of Khukhri from the appellant Amit Kumar @ Amitabh Bachan.

22. So far as the appellant Amit Kumar @ Amitabh Bachan is concerned, even as per the prosecution case, there is no recovery of either any arm or a looted material. The appellant is in custody since 04.06.2006 for more than 9 years. Furthermore, none of the witnesses have identified this appellant. In such circumstances we find that there is no legal evidence to hold the appellant Amit Kumar @ Amitabh

Bachan guilty under Section 396 or 396/412 of the Indian Penal Code, as such we acquit him of the charges. The appellant, namely, Amit Kumar @ Amitabh Bachan, who is in judicial custody, is directed to set at liberty, if not wanted in any other case.

23. So far as appellant Ajay Kumar Yadav is concerned, a pistol is said to have been recovered from his possession. There is no allegation that any looted articles were recovered from his possession. Furthermore, none of the witnesses have identified this appellant, as such we find that there is no sufficient material to uphold his conviction and order of sentence and as such we acquit the appellant Ajay Kumar Yadav of the charges. The appellant is in judicial custody over 9 years also. He is directed to be set at liberty, if not wanted in any other case.

24. So far as appellant Kallu @ Ghanshyam Pandit is concerned, the State has argued that a looted Nokia Mobile of 3230 model has been recovered from his possession. Learned counsel submits that the Mobile, which has been recovered from his possession, is the looted mobile of P.W.1 Arvind Kumar Singh. In support of his submissions, learned counsel has relied upon photo copy of money receipt of Raj Laxmi Telecom, Bombay in favour of D. Singh for a sum of Rs.15,000/-. It is relevant to state here that P.W. 1 is none other than the son of Dwarika Singh (in short D Singh).



25. Learned counsel submits that the investigating officer (P.W. 13) in his evidence stated that the father of the appellant Kallu @ Ghanshyam Pandit had also shown him the original of the money receipt and as such he did not make any further enquiry about its authenticity. We find that P.W.1, in his evidence has not at all referred to the said money receipt in his evidence. He has also not stated that his father has given the photo copy of the sale receipt of Nokia Mobile. We find that though P.W.1 has proved his Railway ticket, he has not said a word about the aforesaid sale receipt. Besides, this we find some over writing in the name of the purchaser. In this view of the matter we are of the view that the prosecution has not been able to establish the case beyond doubt that the Mobile, which was seized from the possession of this appellant in fact, belongs to Arvind Kumar Singh (P.W. 1). Besides this, this appellant has not been identified by any of the witnesses. In this view of the matter, we are inclined to grant benefit of doubt to this appellant and he is acquitted of the charges under Section 396 and 412 of the Indian Penal Code. The impugned judgment of conviction and order of sentence passed against the appellant Kallu @ Ghanshyam Pandit is set aside. The appellant is also in judicial custody for over 9 years, he is directed to set at liberty, if not wanted in any other case.

26. Now we would take up the case of Subodh Kumar

(appellant of Cr. Appeal (DB) No. 441 of 2009). He has been identified by P.W.1 and a Nokia Mobile is said to have been recovered from his possession.

27. Counsel for the State submits that Nokia Mobile seized from this appellant was of 3120 Model. IMEI number of the Nokia mobile tallied, which was looted from the passenger Surendra Prasad, who has been examined as P.W.2. He submits that Surendra Prasad in his testimony has stated that a Nokia Mobile was looted from him on the fateful day, while he was traveling between Rajendra Nagar to Patna Junction. Counsel for the State further submits that IMEI number of the Nokia Mobile fully tallied with IMEI number on the cover of the packet produced by P.W. 2 himself. He further submits that besides seizure of the looted mobile, this appellant has also been identified by a co-passenger, P.W. 1.

28. Counsel for the appellant Subodh Kumar submits that he has not been identified by the owner of the Mobile i.e. P.W. 2. On the other hand, he was identified by P.W. 1, who was not very sure about the identification. Moreover, P.W. 2 in his deposition has not stated that the mobile, which was recovered or seized, was his.

29. Even assuming the prosecution case to be true, we find that the owner of the Mobile (P.W. 2) has not identified this appellant, rather he has been identified by another co-passenger (P.W. 1) and not



with all confidence. Furthermore, the owner of the Mobile has nowhere stated before the court that the Mobile, which was seized or recovered from one of the accused, belonged to him. In this view of the matter, it is difficult to hold that the prosecution has established the charge under Section 396/412 of the Indian Penal Code beyond all reasonable doubt. Besides this, we find that this appellant has too remained in custody for nine years like all other appellants.

30. In the result, Cr. Appeal (DB) No. 441 of 2009 succeeds, the impugned judgment of conviction and order of sentence are set aside and we acquit him from the charges. The appellant is in custody. He is directed to be set at liberty, if not wanted in any other case.

31. This takes us to the last of the appellants, namely, Nirmal Kumar Sinha @ Bittu (appellant of Cr. Appeal (DB) No. 430 of 2009). This appellant is said to be identified by Manju Singh (P.W. 3). This appellant has also been identified by P.W. 4 while he was fleeing from the coach of Lok Manya Tilak Express.

32. Learned counsel for the State submits that in fact P.W. 3 in her evidence has stated that it is this appellant, who opened fire at her husband, which proved fatal. On the other hand, Mr. Pramod Kumar Singh, learned counsel appearing for the appellant, submits that the appellant has been falsely implicated in this case by the police



due to malice and personal grudge of Arun Kumar Singh, the then Sub-Inspector of Police of Malsalami Police Station. He submits that the said officer is to pressurize the father of the appellant Nirmal Kumar Sinha @ Bittu, namely, Vishwanath Prasad Singh, to part with some of his land situated within Malsalami police station to which his father did not agree. He submits that his false implication is apparent from the fact that the details of the names of other accused persons have been mentioned in the F.I.R. along with the parentage, whereas his name has not been mentioned. The name of the last accused has been given as Bittu, which is a common name and can easily be attached to any name as an alias name. He submits that he was arrested on 23.08.2006 by adding the alias name. But the prosecution has not produced any document to establish that he carried alias name as Bittu nor adduced any evidence in this regard. He submits that just after his arrest, his photo was prominently published in various newspapers, namely, Hindi Hindustan, Dainik Jagran and Rashtriya Sahara. Thus he was identified by P.W. 3 at the behest of the police, which had malice against him. In support of his submissions, the appellant has drawn our attention to paragraph 26 of the deposition of the P.W. 3, wherein she stated that she did not give detailed description of the accused to any person including the police. She further stated in para 12 that she reads Magazines and newspapers and

she is subscriber of Dainik Jagran.

33. Counsel for the State submits that it is quite possible that on that particular day P.W. 3 may not have read the newspaper. We would broadly agree with the submissions of the learned counsel for the State. However, when the photo of the appellant published in the newspaper was shown to her, she failed to recognize it, as the accused, who participated in the dacoity. Furthermore, the appellant was identified in the Court for the first time. No T.I. Parade was held earlier.

34. In totality of the circumstances, the identification of the appellant in the Court is not free from doubts and would not inspire confidence, as she had failed to recognize his photo in the newspaper. We further find that P.W. 4 stated that when his train stopped near Kathpool between Rajendra Nagar Terminal to Patna Junction, three persons were running towards east. According to him, Ranjeet Kumar Sinha @ Gulshan was last in the row, whereas this appellant was running ahead of the other two accused. P.W. 4 hardly had gone few seconds to identify this appellant. Furthermore, this appellant was neither arrested while fleeing nor he was arrested from the village Dhelwan, from where other accused persons were arrested. Besides, this we find that the appellant has put in about 9 years in jail. Still amusing is that two separate confessional statements of this appellant

recorded on 20.10.2006 by two different police officials, one by S.I. Dinesh Kumar, officer-in-charge, Rail Police Station at Fatuha and other by R.K. Gupta, Inspector-cum-Officer-in-charge of Alamganj police station on 23.08.2006 at Alamganj police station. The confession is of three page in each of them. It is still puzzling that each word of the confessional statement recorded by the two police officials tallied word by word with each other. In both the confessional statements, it has been stated that appellant has been arrested the previous evening from BISCOUMAN turn around (Golambar) while he was trying to steal motorcycle along with Umesh Kumar and two others. The confessional statements recorded by police officials lead us to doubt the genuinity of investigation against this appellant.

35. In the facts and circumstances of the case, at least the trial court ought to have given the appellant benefit of doubt. In the result, the judgment of conviction and order of sentence passed against the appellant is set aside. Cr. Appeal (DB) No. 430 of 2009 is allowed. The appellant is set at liberty, if not wanted in any other case.

36. In the result, all these appeals are allowed.

(Samarendra Pratap Singh, J.)

(Amaresh Kumar Lal, J.)

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