

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.700 of 2015

Against the judgment of conviction, dated 14.08.2015, and order of sentence, dated 18.08.2015, passed by Mr. Bhola Nath Tiwari, Additional District and Sessions Judge, I, Jamui, in Sessions Trial No. 397 of 2013 arising out of Chandradeep P.S. Case No. 67 of 2011

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Raj Kumar Prasad @ Raju Son of Late Lalkeshwar Prasad Resident of Village -
Rupow, P.S- Rupow, District – Nawada Appellant

Versus

The State of Bihar Respondent

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Appearance :

For the Appellant : Mr. Ravi Bhushan Prasad no. 1, Adv.

For the Respondent : Mr. Sujit Kumar Singh, APP

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CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD

ORAL JUDGMENT

Date: 20-05-2016

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 six year and a fine of Rs.8,000/- and in default of payment of fine to undergo simple imprisonment for one year and, further, convicted under Section 412 of the Penal Code and sentenced to undergo rigorous imprisonment for five years and a fine of Rs.5,000/- and in case of default of fine to undergo simple imprisonment for ten months. However, it has been ordered that all the sentences shall run concurrently.

3. The prosecution case, as alleged in the fardbeyan, by the informant, Laddu Sao, P.W. 1 that on 17.07.2011 at 07.00 P.M. he was going on Bolero jeep, bearing registration no. BR-52-5650, to bring the family members of his owner to Sheikhpura. When, in the way at Barbigha Hatia Mor, a lady carrying a bag, given a sign to stop and when he stopped the jeep, then, she requested that they have to go to Chewada, then, driver disclosed that it is a private jeep and will not carry them. Thereafter, a person of short height disclosed that at this hour they will not get any vehicle and they have a lady with them so requested the driver because they have to reach their destination. On seeing lady, the

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driver, on the request, get them seated in the jeep and they reached Chewada. Three persons standing there said in the jeep and disclosed that they are relatives and they have seen the house where they have to go so let them also be seated and they said that they will get down after passing Chewada Bazar, then, they forced the informant to take the jeep to village Chityaunee and out of fear he took them to Chityaunee and after going to half kilometer ahead of Chityaunee, at a lonely place, they asked to stop the vehicle to meet the call of nature. When he stopped, one person pointed pistol took his key from steering and tied his legs and hands in towel, snatched his rupees three hundred and mobile and thrown him in the paddy field and went away along with the jeep. Thereafter, he managed to untie the towel from which he was tied and made hulla on which several villagers collected and he telephoned the owner and the Chowkidar also intimated Chandradeep Police Station and, thereafter, on information, Sub Inspector of Police of Chandradeep Police Station came and, thereafter, the said vehicle was apprehended and one person was arrested from the vehicle and from his possession the key of the vehicle and mobile was recovered. The person disclosed his name as Raj Kumar Prasad and disclosed the names of his associates as Bipin Choudhary, Murari Pandey, Anita Pandey and Harbhajan Manjhi.

4. On the fardbeyan of Laddu Sao, the first information report ordered to be instituted and the investigation proceeded. After investigation the charge sheet submitted, cognizance taken, case committed to the Court of sessions. After commitment, the charge framed under Sections 395 and 412 of the Penal Code. During the trial four witnesses were examined by the prosecution.

5. P.W. 1 is Rajesh Kumar, P.W. 2 is Laddu Sao, the informant, P.W. 3 is Anand Shanker, the owner of the vehicle and P.W. 4, is Arvind Kumar, the investigating officer.

6. After the evidence of the witnesses, the appellant was convicted, as mentioned above.

7. The learned counsel for the appellant, however, contends that the appellant was not apprehended and nothing was recovered, neither the seizure list has been made available to the appellant nor the appellant has been identified at the place of occurrence. Hence, the order of conviction and sentence is not sustainable.

8. The learned counsel for the State submitted that the prosecution has been able to prove the charge against the appellant.

9. However, taking into consideration the respective submissions of the parties, there is much force in the argument of the learned counsel for the appellant. The prosecution case, as alleged in the first information report that the informant was asked to stop the jeep and, thereafter, he was dragged out of the jeep and, then, snatched the key of the jeep, rupees three hundred and mobile and left him having tied his hands and legs and he was thrown in the nearby paddy field, the informant made a cry, the police came and the informant lodged the first information report, thereafter, the vehicle was apprehended and from the vehicle one person was arrested along with mobile and the key of the vehicle for which seizure list prepared. However, four witnesses examined in the case. P.W. 1, Rajesh Kumar, has been declared hostile as he not supported the prosecution case. P.W. 2 is the informant, Laddu Sao. He supported the prosecution case in his examination-in-chief that he got some persons ride over the vehicle and they get the vehicle stopped at the lonely place and snatched his mobile, rupees three hundred and key of the vehicle and, further, the jeep was apprehended along with Raj Kumar Prasad, the appellant, and from his search the key of the vehicle and mobile was recovered, seizure list prepared and he has proved the seizure list. However, this witness, P.W. 2, in his cross-examination, has stated that on 29.01.2015 he came to Court for the first

time to depose and on 29.01.2015 he saw this appellant for the first time in dock and he had not seen the accused-appellant before 29.01.2015. He has, further, stted that he learnt about the name of the accused for the first time on 29.01.2015 and since before he was not knowing his name, hence, from his evidence it was apparent that the appellant, facing the trial, was not the person who has committed the offence. P.W. 3 is the owner of the vehicle who was neither present at the time of occurrence nor even at the time of the search and seizure and his evidence is of no consequence. P.W. 4 is the investigating officer though he supported the prosecution case, but, he has deposed that when he reached at Bargaon, then, one vehicle was found standing by the side of the road and behind it there was a Bolero jeep and around the jeep some persons were meeting the call of nature by the side of the road and seeing the police vehicle, the persons, who were meeting the call of nature, started fleeing away and out of the said persons, fleeing away, one person was chased and caught and other managed to escape and the person who was apprehended disclosed his name as Raj Kumar Prasad and disclosed the names of his associates and he confessed his guilt and from his possession mobile and the key of the vehicle was recovered and seizure list prepared. However, the seizure list has been proved and marked as Exhibit ½.

10. Having regard to the fact that seizure list was not handed over to the accused nor his signature on the seizure list has been obtained and this witness admitted that the seizure list was prepared, but, on the seizure list the signature of the accused was not taken nor the accused has been given a copy of the seizure list. He has also admitted that before making any search he did not given his search and he has denied the suggestion that anything has been recovered from the possession of the appellant.

11. However, having regard to the fact that none of the

witnesses has identified the appellant, except the investigating officer, the copy of the seizure list has not been handed over nor the copy of the seizure list has been given to the appellant and this casts a serious doubt about the indulgence of the appellant in the case as except the investigating officer there is no evidence against the appellant as none of the witnesses has identified the appellant in the Court nor the vehicle seized has been produced before the Court, hence, best evidence regarding the recovery of the mobile and the key has not been produced in the Court and the only evidence, i.e., the evidence of the investigating officer that he recovered the vehicle, but, what has been recovered has not been produced in the Court and the informant who was looted away and who has filed the case regarding the fact has not identified the appellant, casts a serious doubt about the prosecution case.

12. Hence, having regard to the facts and circumstances of the case, the appellant is entitled to benefit of doubt and I give the benefit of doubt to him as the prosecution has not able to prove the charge beyond reasonable doubt.

13. The order of conviction and sentence, recorded by the trial Court, is **set aside** and the appeal is **allowed**.

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

(Gopal Prasad, J)

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