

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No. 541 of 2013

Against the judgment of conviction and order of sentence dated 21.06.2013 passed in Sessions Trial No. 509/11/130/13 arising out of Wazirganj P.S. Case No. 108 of 2011 by Shri Arunendera Singh, learned Additional Sessions Judge-II, Gaya

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Rajeev Kumar @ Ravi, Son of Doman Gope @ Ramashish Prasad, Resident of Village - Golapur, P.S. - Deep Nagar, District - Nalanda

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant : Mr. S.M. Shabbir Alam, Advocate

For the Respondent : Mr. Sujit Kumar Singh, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD

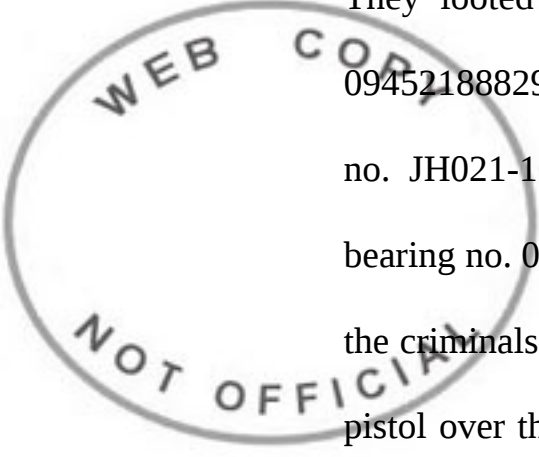
ORAL JUDGMENT

Date: 03-02-2016

Heard learned counsel for the appellant and the State.

2. The appellant has been convicted under Section 412 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for ten years and a fine of Rs.15,000/- and in default of payment of fine to further undergo simple imprisonment for two months.

3. The prosecution case, as alleged by the informant Dinesh Yadav, is that he reached at Gaya, on 29.05.2011 with loaded truck of bangles from Firozabad, some part of the materials as bangles was unloaded at Gaya and rest of the consignment was to be unloaded at Nawadah for which he proceed with same. When he proceeded for some distance and reached village Echua at about 1:30 A:M in the night the road was obstructed by branch of trees, meanwhile a tempo also reached there from the side of Nawadah then seven criminals came on



his truck who were armed with country made pistol, knife and aari. They looted the cash of Rs.10,000/- and mobile bearing SIM No. 09452188829 from the informant who is the driver of the truck bearing no. JH021-1693 and also looted Rs.1,000/- cash and Nokia mobile bearing no. 09451551103 on the point of the arms. It is also alleged that the criminals had assaulted the informant by the barrel of country made pistol over the hips and teeth of the informant. The driver and Khalasi of the truck were caught by the criminals and taken to a distance of near 500 meters in a field and they tied them by rope and four criminals remained surrounding them. The Munshi of the businessman of the loaded truck had also been looted of cash of Rs.35,000/- along with mobile bearing two SIM Nos. 08791829868 and 8804257123. One of the mobile set was got hidden by Munshi in the truck. Thereafter three criminals fled away with looted truck of bangles towards Nawada and after one and half hour the other four criminals who had surrounded the informant also fled away. Thereafter the informant anyhow reached at Police Station Wazirganj and gave statement regarding the occurrence and disclosed the physical appearance of the criminals before the police and recorded his fardbeyan.

4. On the fardbeyan of the informant First Information Report lodged and investigation proceeded. However, during investigation, the Investigating Officer learnt about the recovery of

looted truck and found a person sitting on the driving seat and from his possession two mobile sets with two SIM each were recovered along with looted articles on the said truck. The seizure list was prepared and at the instance of the person apprehended with the truck i.e. the appellant raid was conducted at different places, but nothing has been recovered. Police after investigation submitted charge-sheet on which cognizance has been taken and case committed to the Court of Sessions.

However, during trial seven witnesses were examined. Out of the seven witnesses examined in the case P.Ws. 1 and 2 are the seizure list witnesses who proved their signature on the seizure list but denied that the search and seizure were made before them and asserted that their signature was taken on plain paper.

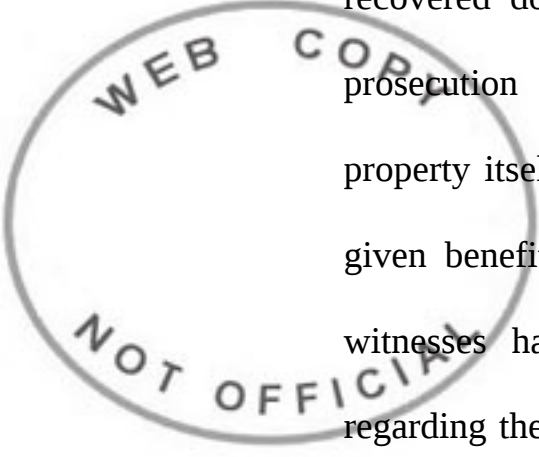
5. P.W. 3 Md. Sujauddin is the then Station House Officer, Parwalpur, Police Station who arrested the accused on the spot and recovered the looted articles and thereafter prepared seizure list which has been proved by him and marked as Ext.2. He has deposed that a truck bearing no. JH021-1693 was apprehended with one Rajeev Kumar who was sitting on the driver's seat and from his search Le phone mobile bearing SIM Nos. 08791829868 and 8804257123 and another mobile set bearing SIM Nos. 8757463707 and 7631385264 were recovered and from the pocket of the full-pant Rs.1390/- was recovered along with other articles which was looted on the truck.

6. P.Ws.4, 5 and 6 are the witnesses who were the persons on the truck at the time of occurrence. They have supported the prosecution case but have not identified the appellant.

7. P.W.7 Dhurv Kumar Singh, the Investigating Officer of this case has stated that he learnt that local police caught a truck along with looted bangles and the person apprehended with the truck disclosed his name as Rajeev Kumar. The appellant has been arrested by the police and on his disclosure steps were taken for apprehending the other accused but none could have been arrested.

8. Taking into consideration the fact that the appellant was apprehended with the truck and the truck was located on the basis of a mobile of the prosecution party the Munsif and the said truck was seized by the Station House Officer, Parwalpur who arrested the accused with the looted truck along with other looted articles, the trial Court convicted the appellant under Section 412 of the Indian Penal Code but acquitted him under Section 395 of the Indian Penal Code.

9. Learned counsel for the appellant has challenged the judgment of conviction and order of sentence recorded by the trial Court. It is submitted that the appellant has not been identified by any of the prosecution witnesses or the informant as the person participating in the dacoity and hence the only material remains is that the appellant was apprehended along with the truck and further the fact that the

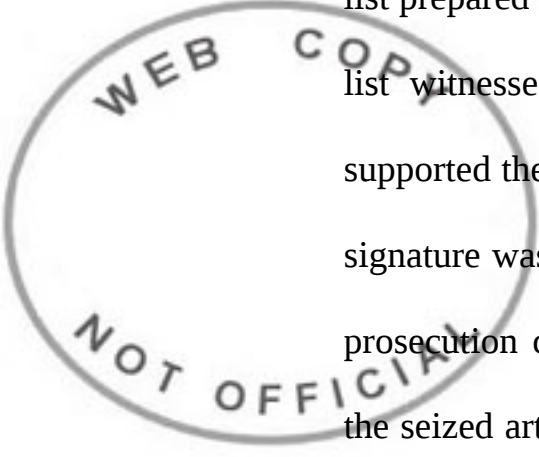


appellant was arrested along with a mobile with SIM but the article recovered does not tally with the article looted or the SIM of the prosecution party and the recovery of these articles being looted property itself becomes doubtful or at least appellant is entitled to be given benefit of doubt. It is submitted that none of the seizure list witnesses has supported the prosecution case and only evidence regarding the search and seizure is the evidence of P.W.3. It is further submitted that even assuming that the appellant is found in possession of the truck then his conviction under Section 412 of the Indian Penal Code is not sustainable in view of the fact that there is no evidence at all to indicate that the appellant had knowledge or reason to believe that he had the said article or has been transferred to the appellant by the commission of dacoity or the appellant dishonestly received from a person whom he knows or he has reason to believe belong to a gang of dacoits or the articles seized to be a stolen property and hence, submits that on the basis of the evidence conviction under Section 412 of the Indian Penal Code is not sustainable and at best a conviction can be recorded under Section 414 of the Indian Penal Code. It is further submitted that the appellant has remained in jail for about five years from the date of arrest itself.

10. Learned counsel for the State, however, contended that the recovery has been made from the possession of the appellant or the

looted articles as per the evidence of P.W.3 the Station House Officer who apprehended the truck on the basis of the location of the mobile phone of the victim and as per the evidence of P.W.3 the said mobile has been recovered from the pocket of the appellant on search and hence, it may be presumed that the appellant has knowledge that the truck and the said mobile is the looted property.

11. However, having regard to the respective submissions of the parties and going through the evidence in a case lodged for offence under Sections 395 and 412 of the Indian Penal Code that the truck was looted, it is evident that the said truck was looted in between the night of 29.05.2011 to 30.05.2011. The said truck was recovered on 31.05.2011 at 4:45 A.M. The recovery of the said truck was made by P.W.3 and the appellant was found seated on the truck. However, the appellant was not identified by any of the witnesses as the person participating in dacoity though the truck was apprehended just after the occurrence on 31.05.2011 at about 4:45 A.M. when the occurrence took place in between 29.05.2011 to 30.05.2011. However, the trial Court acquitted the appellant under Section 395 of the Indian Penal Code as the State has not preferred any cross appeal against the appellant regarding the acquittal under Section 395 of the Indian Penal Code. However, for conviction under Section 412 of the Indian Penal Code the appellant was found sitting on the truck on driver's seat and from



his possession two mobiles with SIM recovered for which the seizure list prepared which has been marked as Ext.1. However, the two seizure list witnesses who have been examined as P.W.1 and 2 have not supported the prosecution, but denied the seizure and asserted that their signature was taken on plain paper. However, P.W.3 has supported the prosecution case regarding the seizure and proved the seizure list but the seized articles and the SIM has not been produced before the Court to substantiate the search and seizure of the mobile nor the mobile and the SIM ever released in favour of the prosecution nor it has been produced in Court. However, the non-production of the seized article itself indicates a doubt regarding the search and seizure of the mobile and SIM from the possession of the appellant and in the facts and circumstances of the case the recovery of mobile and SIM from the possession of the appellant become doubtful. However, from the evidence of P.W.3 and 4, it is apparent that the appellant was apprehended along with the truck while the appellant was sitting on the truck just after one day or thirty six hours of the occurrence and hence, it is strong circumstance of the appellant having been in possession of the stolen property or the looted material. However, for conviction under Section 412 of the Indian Penal Code it is required to prove that the appellant has knowledge or reason to believe that article in his possession is looted article or procured by the commission of dacoity as

per Section 412 of the Indian Penal Code. However, going through the entire evidence there is nothing on record to suggest that there is absolutely no evidence that the appellant had knowledge about the truck on which he was apprehended was looted truck hence, such evidence is missing

12. Learned counsel for the State pointed out that from the evidence of the prosecution witness, it could have been inferred that the appellant was in possession of the truck which he knows or reason to believe to have been transferred by the commission of dacoity.

13. Hence, in view of the fact that evidence that appellant has knowledge or reason to believe that the truck on which he was sitting was looted truck is lacking, the conviction under Section 412 of the Indian Penal Code is not sustainable. However, having regard to the fact that the truck was found in possession of the appellant and hence it can reasonably be inferred that he knows or has reason to believe the same to be stolen property.

14. Hence, the sentence under Section 412 of the Indian Penal Code, awarded to the appellant is hereby modified to Section 414 of the Indian Penal Code. However, having regard to the fact that the appellant is jail custody since 31.05.2011, and the sentence for the offence under Section 414 of the Indian Penal Code is of three years imprisonment, for the ends of justice, it would be appropriate that the

appellant be released from jail custody forthwith. Accordingly, the appeal is allowed in part and the appellant is directed to be released from jail custody forthwith, if not wanted in any other case.

(Gopal Prasad, J)

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