

IN THE HIGH COURT OF JUDICATURE AT PATNA
(Against the judgment of conviction and order of sentence, dated 20.05.1993,
passed by Shri P. K. Singh, learned 3rd Additional Sessions Judge, Siwan in
Sessions Trial No. 25 of 1979, arising out of Siswan P.S. case no. 03 of 1977)

Criminal Appeal (DB) No.249 of 1993

Arising Out of PS.Case No. -null Year- null Thana -null District- SIWAN

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1. Sudama Singh, Son of Jaljor Singh,	
2. Wakil Yadav, son of Dulli Yadav,	
3. Mokhtar Yadav, son of Dulli Yadav,	
4. Suresh Bhar, son of Bhuwal Bhar,	
All resident of Village- Harnathpur, P.S.- Raghunathpur, District- Siwan.	
	 Appellants
	Versus
The State of Bihar	 Respondent
	With

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Criminal Appeal (DB) No. 286 of 1993

Arising Out of PS.Case No. -null Year- null Thana -null District- SIWAN

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1. Ram Naresh Yadav, son of Late Ram Deyal Yadav, resident of Village- Gudri Hata, Police Station- Siswan, District- Siwan.	
2. Ram Deo Yadav, Son of Mahabir Yadav, resident of Village- Subh Hata, Police Station- Siswan, District- Siwan.	
3. Mahajan Yadav, son of Late Lakhan Yadav, resident of Village- Bhagar, Police Station- Siswan, District- Siwan.	
4. Kanhaya Yadav, son of Late Beetan Yadav, resident of Village- Bhagar, Police Station- Siswan, District- Siwan.	
	 Appellants
	Versus
The State of Bihar	 Respondent
	With

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Criminal Appeal (DB) No. 294 of 1993

Arising Out of PS.Case No. -null Year- null Thana -null District- SIWAN

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1. Hari Charan Yadav, Son of Fulena Yadav,	
2. Mohan Yadav, son of Late Ratan Yadav,	
Both residents of Village- Deri-Rai-Ke Bangra, Police Station- Siswan, District- Siwan	
3. Manan Yadav, son of Late Tukri Yadav, resident of Village- Bhagar, Police Station- Siswan, District- Siwan.	
	 Appellants
	Versus
The State of Bihar	 Respondent

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Appearance :
(In CR. APP (DB) No.249 of 1993)
For the Appellant/s : Mr. Bipin Kumar, Amicus Curiae
For the Respondent/s : Mr. A. K. Sinha, APP
(In CR. APP (DB) No.286 of 1993)
For the Appellant/s : Mr. Bipin Kumar, Amicus Curiae



For the Respondent/s : Mr. S. C. Mishra, APP
(In CR. APP (DB) No.294 of 1993)
For the Appellant/s : Mr. Bipin Kumar, Amicus Curiae
For the Respondent/s : Mr. Abhimanyu Sharma, APP

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

And

HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH)

Date: 16-12-2016

All the three appeals have been preferred against the judgment and order of conviction, dated 20.05.1993, passed by learned 3rd Additional Sessions Judge, Siwan in Sessions Trial No. 25 of 1979, arising out of Siswan P.S. case no. 03 of 1977, by which all the 11 accused have been convicted under Section 395 of the Indian Penal Code and sentenced to undergo Rigorous Imprisonment for life. It is relevant to state here that while convicting these 11 appellants, the trial court acquitted the two other accused, namely, Bharat Bhar and Sadan Dusadh, who were charged only under Section 412 of the Indian Penal Code.

2. The prosecution case, as setout in the Fardbeyann of Thakur Singh, son of Sampat Singh, resident of Village- Dera-Rai-Ke Bangra, Police Station- Siswan, District- Siwan recorded by ASI K.K. Mishra of Siwan Police Station at 10.00A.M. on 11.07.1977 at the Dalan of Sri Radha Rai of Dera-Rai-Ke Bangra, in short is as follows:

The informant, Thakur Singh, stated that in the previous



night he along with his uncle, Radha Rai, were lying north to the roof of “Janani Kita”. In the meantime, at 12 in the night, 40-45 persons appeared from northern side variously armed with Lathi, Bhala, pistol, gun and axe, which the informant saw in the flash of his torch light. Some of the miscreants had covered their face. As they were moving on the back side of the house, they were talking amongst themselves to assault Thakur Singh, Radha Rai, Mahatam Singh, Mokhtar Singh etc. In the process, they reached the door of Janani Kita situated on eastern side. As they could not break the eastern door they started breaking the northern door with axe. After breaking the door, 10 miscreants entered into his house as well as in the eastern room. After entering into the house, the accused persons broke the earthen pot and took away valuables including gold and silver. They also opened three boxes and took its belongings. In the light of torch, the informant recognized Mohan yadav, son of Ratan Yadav and Hari Charan Yadav, son of Fulena Yadav residents of village Dera-Rai-Ke Bangra and his relative Manan Yadav resident of Bhakar under Siswan police station. Accused Manan Yadav and Hari Charan Yadav were armed with country made pistol, whereas Mohan Yadav was armed with country made gun. The aforesaid Manan Yadav has often been coming to the house of Mohan Yadav, since last two years. He further stated that the aforesaid two persons always used to tell him that they



will commit dacoity in his house. Apart from the informant, his uncle Radha Rai (P.W.3) also recognized him in torch light. The dacoits opened six rounds of firing, which injured his nephew Ram Naresh Singh. After committing dacoity in his house, the accused persons committed dacoity in the house of Birchha Singh son of Ekbal Singh and Banka Rai son of Ram Prasad Rai, also of the same village. The informant claims that inmates of the aforesaid two houses would be recognizing the persons, who committed dacoity in their houses as well in the same transaction.

6. On the basis of the Fardbeyan, Siswan P.S. case no.3 dated 12.07.1977 under Section 395 of the Indian Penal Code was instituted. The police after investigation submitted charge-sheet also under Section 395 of the Indian Penal Code, whereafter cognizance of offence was taken and the case was committed to the Court of Sessions. Charges were framed under Sections 395 of the Indian Penal Code against all these 13 accused persons and charges under Section 412 of the Indian Penal Code was also framed against accused Sadan Dusadh and Bharat Bhar. The appellants pleaded not guilty to the charges and claimed to be tried.

During trial, Manager Mali and Sukai Lohar died and their names were expunged vide order, dated 20.11.1990 and 31.08.1987, as such only 13 accused persons were put on trial.



7. The prosecution in support of its case, examined as many as 14 witnesses, namely, Mokhtar Singh (P.W.1); Mahattam Singh (P.W.2); Radha Rai (P.W.3); Mahatam Singh (P.W.4); Mukhtar Singh (P.W.5); Ram Naresh Singh (P.W.6); Vidhya Sagar Singh (P.W.7); Ram Pravesh Singh (P.W.8); Smt. Raj Kishori Devi (P.W.9); Sita Devi (P.W.10); Rama Kant Rai (P.W.11); Md. Nurul Ayen (P.W.12); Brichha Rai (P.W.13); Thakur Rai (P.W.14); Shanti Devi (P.W.15) and G.S. Poddar (P.W.16).

8. Out of these 14 witnesses, P.W.10 Sita Devi and P.W.11 Rama Kant Rai are hearsay witness, whereas P.W.8 Ram Pravesh Singh and P.W.12 Md. Narul Ayen are seizure list witnesses. Apart from oral evidence, the prosecution adduced documentary evidence also. Seizure list is marked as Ext.1, Fardbeyan is Ext.-2, Copy of Test Identification Parade is Ext.3 to 3/3, seizure list is Ext. 4 to 4/2.

9. The defence examined one witness, namely, Dudhnath Singh in support of its case. The evidence of D.W.1 is to the effect that the accused persons are known to the prosecution side and they have been implicated in the case on account of past rivalry.

10. The learned trial court on consideration of materials on record, while acquitting accused Sadan Dusadh and Bharat Bhar of charge under Section 412 of the Indian Penal Code, convicted the rest



11 accused persons (appellants) under Section 395 of the Indian Penal Code and sentenced them to undergo R.I. for life. Being aggrieved, the appellants have filed these appeals, which are being heard analogous.

11. As noticed earlier, the prosecution in support of the case had examined 14 witnesses, out of these 14 witnesses, P.W.1, P.W.2, P.W.3, P.W.6, P.W.7, P.W.9 and P.W. 14 have claimed to have witnessed the dacoity in one house or the other.

12. It is the prosecution case that dacoity took place in the house of informant Thakur Rai (P.W.14), Bichha Rai (P.W.13) and Vidhya Sagar Singh (P.W.7), the latter being son of Banka Singh. P.W.1, P.W.2, P.W.3, P.W.6 and the informant Thakur Rai (P.W.14) himself are said to be the witnesses of the dacoity in the house of Thakur Rai, whereas Vidhya Sagar Singh (P.W.7) and Bichha Singh (P.W.13) are the witnesses to the dacoity committed in their houses. P.W.1 Mukhtar Singh in para.6 of his evidence identified accused Mokhtar Yadav, Suresh Rai, Bokil Yadav, Manan Yadav, Mahajan Yadav and Ram Naresh Yadav. P.W.2 Mahtam Singh did not identify any of the appellants. P.W.3 Radha Rai identified accused Mokhtar Yadav. P.W.7 Vidya Sagar Singh identified Mokhtar Yadav, Ram Naresh Yadav, Suresh Rawat and Wakil Yadav. P.W.9 Smt. Raj Kishori Devi did not name any of the appellants. P.W.14 Thakur Rai



named three named accused persons.

13. Apart from this, the prosecution held T.I.P. in presence of P.W.16 G.S. Poddar, Sub-Judge (the then Judicial Magistrate, 1st Class, Siwan Civil Court). P.W.16 in his evidence stated that the appellants of Cr. Appeal (DB) No. 286 of 1993, namely, Ramdeo Yadav was identified by P.W.3, whereas Mahajan Rai and Kanhaiya were identified by Thakur Rai (P.W.14). He further stated that witness no.3, 7 and 14 identified Sudama Singh and Mokhtar Yadav (appellant of Cr. Appeal (DB) No. 249 of 1993) and witness no. 1, 2, 7 and 14 identified Wakil Rai and Suresh Rai of the said appeal.

14. As noticed earlier, the three appellants of Cr. Appeal (DB) No. 294 of 1993, namely, Mohan Yadav, Hari Charan Yadav and Manan Yadav were named in the F.I.R. itself.

15. On these premises, learned Additional Public Prosecution appearing for the State submits that all the accused persons have been identified by one witness or the other and as such the trial court has rightly convicted them under Section 395 of the Indian Penal Code.

16. As no one appeared on behalf of the appellants, as such Mr. Bipin Kumar, Advocate was appointed as Amicus Curiae. Learned counsel submits that it is a case of single identification in



respect of all the four appellants of Cr. Appeal (DB) No. 249 of 1993 and it would not be safe to convict them in view of decision reported in 1980 BLJ 445, 1981 BLJ 462 and 1983 BLJ 206.

17. Learned Amicus Curiae further submits that the appellants of Cr. Appeal (DB) No. 249 of 1993 were well known to the prosecution side from before and they have been subsequently implicated, as an after thought. In support of his submission, learned counsel has referred to para 20 of evidence of P.W.7. He submits that the appellants are well known from before, as they are of the adjoining village. Furthermore, Mokhtar and Wakil are brothers, whereas Sudama and Suresh are closely associated with them. He submits that in case, the appellants had participated in the dacoity, they could have been named by the informant and his family members at the initial stage itself.

18. Learned Amicus Curiae further submits that the appellants of Cr. Appeal (DB) No. 294 of 1993, namely Mohan, Hari Charan Yadav and Manan have been falsely implicated in the case because of past enmity. He submits that the accused Hari Charan Yadav had filed a case against the informant of the present case and others giving rise to S.T. No. 171 of 1978. In the aforesaid case, the informant of the present case along with others (witnesses) have been convicted, in which one Ram Chandra Yadav was murdered, who



happens to be the brother of Hari Charan Yadav. In the aforesaid case, the appellants Mohan Yadav and Manan Ahir, who are cousin of Hari Charan Yadav were witnesses and in order to take revenge, all of them have been implicated in the instant case.

19. We have heard the learned counsel for the parties and perused the materials on record. As per the informant, the prosecution case in short is that on the relevant date about 40-45 accused persons entered into his house as well as in house of one Vidya Sagar Singh and Brichha and committed dacoity. However, no questions were put nor any imputations were alleged with respect to commission of dacoity in house of Viday Sagar Singh and Brichha Singh. Besides this, it is the own case of the informant that some of the persons had covered their faces with Gamchha (towel) whereas some had not. It is surprising that though the accused belonged to the same village and adjoining village, had not covered their faces, which is unusual, as generally the persons, who are known would try to cover their faces in course of dacoity. It is equally surprising that the informant identified three accused persons in a group of 40-45 miscreants by the flash of torch light in the dark night, when admittedly there was no other source of light in the house at the relevant time.

20. Apart from the general grounds taken by the appellants of all these three appeals, they have taken individual



grounds as well:

21. The case of the appellants, namely, Sudama Singh, Wakil Yadav, Mokhtar Yadav and Suresh Yadav, of Cr. Appeal (DB) No. 249 of 1993 is identified by a single witness. The learned Amicus Curiae rightly submitted that it would not be safe to convict them on the isolatory evidence of single identification. Situated thus, we find that the prosecution has not been able to establish the case under Section 395 of the Indian Penal Code beyond all reasonable doubt and the trial Court at least should have acquitted them giving benefit of doubt, and as such we acquit them of the charges.

22. So far as the appellants of Cr. Appeal (DB) No. 286 of 1993 is concerned, the prosecution witnesses have stated that the appellants therein are of village Harinathpur, which is a adjacent village and the accused persons, who are close relative, are well known to the prosecution and if they had been involved in the case, there was no reason that they could not have been identified by the informant and named in the F.I.R. As such, we find that the evidence against appellants of Cr. Appeal (DB) No. 286 of 1993 is not convincing enough to hold them guilty under Section 395 of the Indian Penal Code and accordingly we acquit them also of the charges levelled.

23. Now coming to the 3rd set of appellants, namely,



Mohan, Hari Charan Yadav and Manan of Cr. Appeal (DB) No. 294 of 1993, we find that their case is even better placed. One of these appellants, namely, Hari Charan Yadav had earlier filed a case against the present informant Thakur Rai giving rise to S.T. No. 171 of 1978, in which the present informant along with some of the prosecution witnesses have been convicted for murder of Ram Chandra Yadav, own relative of Hari Charan Yadav. The other two appellants, namely, Mohan Yadav and Manan Yadav, are cousin of the appellant Hari Charan Yadav and neighbours.

24. In the background of the materials on record, it has not been established by the prosecution beyond all reasonable doubt that the appellants have not been implicated in this case on account of past enmity, as such the trial court ought to have given at least the benefit of doubt and acquitted the accused persons of the charges.

25. In the result, all these appeals succeed. The judgment of conviction and sentence, dated 20.03.1993, passed by the learned 3rd Additional Sessions Judge, Siwan in Sessions Trial No. 25 of 1979 is set aside.

26. All the appellants are on bail. They are discharged from the liabilities of their bail bonds.

27. Let the 1st, 2nd and last page of the Judgment be handed over to Mr. Bipin Kumar, learned Amicus Curiae, appearing



on behalf of all the appellants.

(Samarendra Pratap Singh, J.)

(Sanjay Kumar, J.)

Uday/-

AFR/NAFR	NAFR
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