

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.478 of 2012

Against the judgment of conviction dated 15.03.2012 and order of sentence dated 17.03.2012 passed by Shri Anil Kumar Singh, XIth Additional Sessions Judge, Saran, in S. Trial No. 230 of 2009 (arising out of Jalalpur P.S. Case No. 54 of 2008 corresponding to G.R. No. 2595 of 2008).

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Ganpat Bawri, Son of Late Nandu Bawri Resident of Village-Dhanu Para,P.S- Khedar Chak, District- Badan, Uttar Pradesh.

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant : Mr. Manoj Kumar, Advocate.
Mr. Raj Narayan Mishra, Advocate.
For the State : Mr. Abhay Kumar, Advocate.

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CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD
ORAL JUDGMENT

Date: 17-03-2016

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

2. This appeal arises against the judgment of conviction dated 15.03.2012 and order of sentence dated 17.03.2012 passed by Shri Anil Kumar Singh, XIth Additional Sessions Judge, Saran, in S. Trial No. 230 of 2009 (arising out of Jalalpur P.S. Case No. 54 of 2008 corresponding to G.R. No. 2595 of 2008) by which the appellant had been convicted for offence under Section 395 of Indian Penal Code and sentenced to undergo rigorous imprisonment for ten years and payment of fine of Rs.5,000/-. Further he had been convicted for



offence under Section 412 of Indian Penal Code and sentenced to undergo rigorous imprisonment for ten years and payment of fine of Rs. 5,000/- and for non-payment of fine further sentenced to undergo imprisonment for one year. It has further been ordered both the sentences were to run concurrently. However, the appellant had been acquitted from the charge for offence under Section 397 of Indian Penal Code.

3. The prosecution case as alleged in the First Information Report by the informant Parmeshwar Prasad alleging there in that on 04.09.2008, he closed his jewellery shop at 7.00 P.M. as usual and went to his house. In the night intervening between 04.09.2008 to 05.09.2008 at half past twelve, he was informed by one Sunil Kumar from the telephone booth that some criminals have broken the lock of his shop and had committed dacoity and also disclosed that the police was also informed. On getting the said information, the informant proceeded and reached at his shop then found that lock of his shop was broken and articles of the shop have ransacked. It is further alleged that after broken the lock of the shop, the criminal looted the jewellery which contained Ring, Jumphka, Jhala, chain as well silver ornaments. During dacoity, on information police also reached at the spot. The police had caught hold of one criminal and on enquiry he disclosed his name as Ganpat Bawri and also disclosed names of his



associates who participated in the occurrence as Ram Singh, Mulchand Babri, Radhe Shyam Babri, Lakhan Babri, Ram Paul Babri, Ram Kishore Babri, Kailash Babri, Mangal Babri, Gulab Devi and Parwati Devi. He also disclosed that both the ladies Gulab Devi and Parwati Devi first came to the shop as a customer and after seeing the articles intimated other male members who had committed dacoity. However, other eight persons managed to flee away when the police came at the time of occurrence. Further case is that three police officers were found in injured state and when the police reached at the place of occurrence accused persons started firing at the police party and managed to escape, but one person was caught who disclosed his name as Ganpat Bawri and from search of the accused person two loaded pistols, nine cartridges and looted articles recovered. After recovery, the police prepared seizure list of seized articles. Further case is that people disclosed that one criminal had also been injured by the police firing but his associates manage to take him away. It is further alleged that after looting the shop of the informant accused persons also broken the lock of the shop of one Kanhaiya Lal, but since the police reached at the place of occurrence they could not loot the shop of Kanhaiya Lal.

4. The Fardbeyan of the informant was recorded by Sri D. K. Sinha S.H.O., Jalalpur, at about 2.45 hours on 05.09.2008. After



recording Fardbeyan, investigation proceeded and during investigation, seizure list was prepared of articles seized from the possession of the apprehended appellant. However, looted articles as well as fire arms recovered from the possession of the appellant and hence a separate case of dacoity had been filed against the appellant. The I.O. recorded confessional statement of the accused who was apprehended and inspected the P.O. and found that lock of shop of the informant was broken and shutter was also broken and articles of the shop was ransacked. He has further given description of the P.O. and also found some blood stain. He recorded statement of the witnesses and articles were handed over to the informant. The I.O. obtained injury reports of constables who were injured at the place of occurrence and after completing investigation submitted charge sheet on which cognizance was taken and case was committed to the Court of Sessions.

5. During trial six witnesses were examined on behalf of the prosecution and documentary evidence adduced are Fardbeyan of informant Exhibit-1, signature of Sunil Kumar as Exhibit-1/A, Seizure list Exhibit 2 and 2/A and signature of officer in charge of Jalalpur P.S. on Formal F.I.R. as Exhibit-3.

6. P.W. 2 is informant and supported the prosecution case that he received information from Sunil Kumar, P.W. 3 about dacoity



in shop by breaking open the lock of the shop of the informant, he immediately rushed to the place of occurrence and saw that lock of his shop was broken and articles of the shop was ransacked and one person apprehended at the spot who disclosed his name as Ganpat Bawri. P.W. 1 Anil Kumar Prasad, P.W. 3 is Sunil Kumar, P.W.4 is Kanhaiya Lal Sah, P.W.5 is Badri Sah and P.W. 6 Dhananjay Kumar Sinha. P.W.5 in his evidence supported the prosecution case and stated that on the date and time of occurrence he was coming forward the shop of Mohan Lal Sah and saw that the accused persons broken the lock and open the shop of the informant then he immediately informed Manoj Gupta and Manoj Gupta informed the police, on getting information, the police reached at the spot then accused persons started firing and police also encounter by which police persons have got injuries. In the meantime, accused persons started fleeing away by firing then one accused person was apprehended and he disclosed his name as Ganpat Bawri and from his possession two pistols, 11 cartridges and ornaments of gold and silver were recovered by which seizure list was prepared.

7. The trial court taking into consideration the evidence of witnesses convicted the appellant and sentenced as mentioned above.

8. Learned counsel for the appellant however challenged the order of conviction and sentence recorded by the trial court on the



ground that the identification of the articles has not been proved by cogent, reliable and unimpeachable evidence. It has further been contended that, though, there was allegation that police had received fire arms injury or got injured during dacoity when they tried to catch the accused persons, but the injury report has not been proved. It has further been contended that, though, there is allegation of fire arms seized from the possession of the appellant, but neither seized fire arm nor article seized had been brought on record as material exhibit nor any report with regard to seized article brought on record. Hence, contended that since injured police officer who has received injury also has not come to depose nor injury report has been proved.

9. Learned counsel for the State however contends that prosecution has proved the case for offence under Section 395 of Indian Penal code and witnesses have specifically stated about dacoity in the shop of the informant and the appellant was apprehended on the spot and seizure list prepared in presence of the witnesses. Hence, the prosecution has been able to prove the charges for offence under Section 395 of Penal Code to record conviction.

10. Taking into consideration the submissions of both the parties as well as allegation in the First Information Report, I proceed to consider whether the prosecution has been able to prove the charges against the appellant beyond all reasonable doubt. The prosecution as



alleged in the First Information Report that dacoity was committed in the night in the shop of the informant when the informant returned his house after closing the shop of the informant. Witnesses have also stated that accused persons broken lock and open the shop consequently the police and the informant reached at the place of occurrence and police resorted to firing and accused persons also fired and they manage to flee away by resorting firing. However, one person was apprehended by the police and the entire occurrence happened in front of the witnesses and witnesses have supported the prosecution case regarding apprehension of the appellant at the spot and at the time of dacoity. Further articles seized from the possession of the appellant were looted articles.

11. However, having regard to the fact since the witnesses P.Ws. 1,2,3,4 and 5 have supported the prosecution case claiming to be eye witnesses to the occurrence and there is nothing to disbelieve their evidences.

12. However, argument advance by the learned counsel for the appellant that since the police officers who have been injured during dacoity by the fire arms having not been examined and there is injury report having not been proved hence evidence of prosecution witnesses required to be disbelieved.

13. However, I do not find any reason to reject the evidences



of the witnesses of P.Ws. 1 to 6 merely on the ground that the police officers who got injured have not come to depose. However, going to the evidences of the witnesses P.W. 1 to 5 who claimed to be eye witnesses in the occurrence except P.W. 2 who have come after received information from P.W. 3 regarding dacoity having being committed in his shop and hence, evidence of P.Ws. 1, 3, 4 and 5 cannot be disbelieved on the ground that police officer who have got injury has not been examined in the case nor their medical evidence has been proved regarding their injury. However, it is true that police officer has not been examined who have got injured. However, having regard to the prosecution evidence of witnesses cannot be discarded who have deposed in the case being eye witnesses to the occurrence and their evidences have worthy of confidence cannot be out outright rejected merely on the ground that police officer who got injured had not come to depose. However, the defence for non-examination of police and not proving the injury given the benefit by acquitted for offence under Section 379 of Indian Penal Code.

14. However, the evidence of witnesses cannot be outright rejected merely on the ground police officer who got injured has not been examined and there is no reason to reject their evidence merely on the ground to produce the same sort of evidence and the witnesses have come to depose the same story. Further, if at the time of

committing robbery or dacoity, the offender uses any deadly weapon, or causes grievous hurt to any person, or attempts to cause death or grievous hurt to any person the charges for offence under Section 397 of Penal Code cannot be outright rejected.

15. However, the trial court itself not convicted the appellant for charge for offence under Section 397 of Penal Code for want of sufficient evidence. With regard to the evidence of P.Ws 1 to 6, they are supported the prosecution case regarding dacoity. Further fact that appellant was arrested at the spot in full public view of the witnesses and recovered of fire arms and looted articles from the possession of the appellant. In this connection, seizure list having been prepared in full public view at the time of dacoity and article seized from the possession of the appellant.

16. Hence, I do not find any merit to convict the appellant for offence under Section 397 of Indian Penal Code.

17. However, conviction has been recorded for offence under Section 395 as well as for offence under Section 412 of Indian Penal Code against the appellant when the appellant apprehended at the spot while committing dacoity and articles seized from his possession hence conviction recorded under Section 412 of Penal code neither proper nor sustainable. Section 412 of Penal Code provides that “whoever dishonestly receives or retains any stolen property, the

possession whereof he knows or has reason to believe to have been transferred by the commission of dacoity, or dishonestly receives from a person, whom he knows or has reason to believe to belong or to have belonged to a gang of dacoits, property which he knows or has reason to believe to have been stolen, shall be punished subject to charge against him in additional charge of dacoity.

18. Hence, conviction and sentence recorded by the trial court for offence under Section 395 of Indian Penal Code is sustained. However, conviction and sentence under Section 412 of Indian Penal Code is not sustainable

19. With this modification, the appeal is dismissed.

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

(Gopal Prasad, J)

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