

IN THE HIGH COURT OF JUDICATURE AT PATNA**Criminal Appeal (SJ) No.566 of 2015**

Arising Out of PS.Case No. -21 Year- 2014 Thana -BALRAMPUR District- KATIHAR

=====

1. Raju Sah @ Tumpa Son of Panna Lal Sah Resident of Village - Deshbandhu
Para, P.O.- Dalkola, P.S- Karandighi, Distt- Uttar Dinajpur (W.B.)

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

with

Criminal Appeal (SJ) No. 568 of 2015

Arising Out of PS.Case No. -21 Year- 2014 Thana -BALRAMPUR District- KATIHAR

=====

1. Shahid Alam Son of Nur Mohammad Resident of Village-Bhbhan Pater
(Malikpur), P.O.-Dalkola, P.S.-Karandighi, District-Uttar Dinajapur (W.B.)

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

Appearance :

(In CR. APP (SJ) No.566 + 568 of 2015)

For the Appellant/s : Mr. Amal Kr. Sinha, Advocate

For the Respondent/s : Mrs. Abha Singh, APP

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 07-09-2017

These appeals have been preferred against the judgment of conviction and sentence dated 02.07.2015 passed by Additional Sessions Judge-3rd, Katihar in Sessions Trial No. 225/2014 whereby and whereunder both the appellants, namely, Raju Shah @ Tumpa and Shahid Alam have been found guilty for an offence punishable under Sections 395 IPC, 412 IPC and sentenced to undergo RI for 10 years as well as fined of Rs. 25,000/- in default thereof, to undergo RI for 9 months under Section 395 IPC while



sentenced to undergo RI for 10 years fined of Rs. 25,000/- in default thereof, to undergo RI for 9 months under Section 412 IPC with a further direction to run the sentences concurrently.

2. PW-4, Md. Nazir Hussain gave his Fard-e-beyan on 21.02.2014 at about 9.15 PM near Village-Ahuta over Telta Bhurri Road before O/C, Balrampur disclosing therein that he along with his companion Tabjul had gone to his house at village-Mithapur and was returning therefrom on motorcycle. Because of the fact that Dalkola Rail Gate was jam packed so, he diverted his rout through Mallikpur. At about 7.00 PM, when they proceeded 500 yard ahead of Mallikpur Railway Crossing, one person armed with Lathi appeared and directed him to stop the motorcycle, joined by five other persons who were hidden nearby maize field. He had offered them Rs. 2000/- which was along with him but they had not taken the cash. They took control over motorcycle and two of them driven away the vehicle. After departure of aforesaid two miscreants along with the bike, then thereafter, the remaining assaulted him as well as his friend, Tabjul with Lathi whereupon, they both ran away. After covering some distance, he informed his Mamera brother, Shahjamal over mobile and disclosed his location, incident they faced as well as direction wherein miscreants had gone with his motorcycle. He had also informed others. Police officials were also informed who chased and during



course thereof, with the assistance of local persons, two persons were apprehended with motorcycle. Till then, he also reached at the spot and identified his vehicle as well as the culprits who took away his motorcycle. He had also claimed identification of remaining accused. On interrogation, both of them disclosed their identity as Md. Shahid Alam son of Nur Mohammad Resident of Village-Babhan Pater (Malikpur), P.O.-Dalkola, P.S.-Karandighi, District-Uttar Dinajapur and Raju Shah son of Panna Lal Sah Resident of Village - Deshbandhu Para, P.O.- Dalkola, P.S. Karandighi, Distt- Uttar Dinajpur and further, disclosed names of their associates as Salman Khurshid son of Sahimuddin, R/O- Deshbandhu Para, Chhotu son of Aslam, R/O Deshbandhu Para, Zakir son of Tauheed R/O , Bhabhanpattar, and Raja son of Vijay R/O Deshbandhu Para, with full details. They have also disclosed that they used to loot within the territory of Bihar in pre-planned manner and then slipped to Bengal territory to evade their arrest as well as identity.

3. After registration of the case, investigation proceeded and concluded by way of submission of charge-sheet against these two accused/appellants keeping investigation against remaining, facilitated the trial which met with ultimate result, subject matter of their appeals, while co-accused Md. Salman Khurshi was acquitted.



4. The defence case as is evident from the mode of cross-examination as well as statement recorded under Section 313 of the CrPC is of complete denial. Neither any DW nor any documentary evidence has been adduced on behalf of defence.

5. In order to substantiate its case, prosecution had examined altogether 9 PWs out of whom PW-1, Md. Khushdil, PW-2, Tabjul Sheikh, PW-3, Shahjamal, PW-4, Md. Nazir Hussain, PW-5, Manzoor Alam, PW-6, Arun Kumar, PW-7, Rakesh Raman, PW-8, Dhananjay Kumar and PW-9, Hansraj Sah. Side by side, had also exhibited Ext-1 series, signature of respective seizure list witnesses, Ext-2 series, signature of informant over Fard-e-beyan, Fard-e-beyan, endorsement over Fard-e-beyan, Ext-3 series, Arres Memo with regard to Shahid Alam and Raju Shah, Ext-4, Formal FIR, Ext-5, inculpatory extra-judicial confessional statement of accused, Shahid Alam.

6. While challenging the findings recorded by the learned lower court, it has been submitted on behalf of appellants that the judgment of conviction and sentence rendered by the learned lower court happens to be wrong, illegal, capricious and in likewise manner, sentence having been inflicted against each of the appellant to be arbitrarily severe. Furthermore, it has been submitted that the learned lower court should have acquitted the appellants holding that



the prosecution failed to substantiate its case beyond all reasonable doubts in the background of the fact that both the seizure list witnesses, namely, PWs-1 and 3 have not supported the case of the prosecution. They have not supported the factum of recovery as well as seizure of motorcycle from the possession of these two appellants and that being so, recovery from the possession of these two appellants is found not at all substantiated. Stressing upon the point, it has also been submitted that when the evidence of PW-7 is taken together, the deficiency in the prosecution case is found further exposed and as, he had stated that both these two appellants were apprehended with the help of the local people and none of them has been cited as charge-sheet witnesses nor examined during course of trial. That being so, apprehension of these two appellants along with motorcycle suffers from vagueness and that being so, the benefit of doubt could have been given to the appellants.

7. It has also been submitted that the informant Md. Nazir Hussain who was the victim along with his friend, Tabjul who are PW-4 as well as PW-2 respectively failed to identify these two appellants to be the member of dacoits and on account thereof, their complicity as member of dacoits as found and held by the learned lower court is not at all in accordance with law. Apart from this, it has also been submitted that PWs-6 and 9 are the police officials who, as



per evidence whatsoever they deposed during course of trial that they were also informed with regard to snatching of motorcycle and further taking it away by the miscreants, is not at all found consistent with each other, apart from the fact that non of them had claimed to have apprehended these two appellants. Therefore, taking into account the totality of the event, the judgment of conviction and sentence recorded by the learned lower court did no justify its propriety.

8. While refuting the submissions made on behalf of the appellants, it has been submitted by the learned APP that in terms of Section 114 of the Evidence Act, more particularly, illustration no.1, has properly been considered and applied by the learned lower court whereunder the aforesaid finding is permissible in the background of the fact that soon after occurrence, the apprehension of accused with booty justify the same. Consequent thereupon, it has been submitted that from the evidence available on record, it is apparent that these two appellants were apprehended during course of fleeing with the booty and so, conviction and sentence recorded against them for an offence punishable under Section 395 as well as 412 IPC is permissible.

9. From the record it is evident that though at the stage of investigation, the witnesses properly supported the occurrence as well as identification of accused being the dacoits who snatched away



motorcycle, recovery of motorcycle along with their apprehension, however, during course of trial as their conduct has been perceived half heartedly substantiated the case. PW-3, one of the seizure list witness happens to be owner of the vehicle. So far the occurrence is concerned, PWs-2, 3 and 4 have consistently deposed that PW-3, informant and his companion fell prey at the hands of the miscreants who snatched away motorcycle. They are also consistent with regard to activity of the police by whose timely intervention motorcycle was recovered, seized, but on the factum of the seizure from the possession of these two appellants, they deflected, however, PWs-1 and 3 had shown their presence over the seizure list.

10. PW-5 had reiterated the same disowning to identify the accused in dock and further, during course of cross-examination, had stated that that he was not at all present during course of commission of occurrence as well as at the time of recovery of the motorcycle. So, from the evidence of victim as well as witnesses, the factum of occurrence, recovery of motorcycle are found proved, but so far identification of accused happens to be divulsive.

11. The second kind of evidence is of police officials. Evidence of PW-6 being an Investigating Officer would be discussed later on.

12. PW-7 happens to be the Officer Incharge who had



deposed that on 21.02.2014, he along with other police officials, Arun Hansraj, armed police personnel proceeded in patrolling and while they were at Mallikpur Bazar, they got confidential information that just now a motorcycle has been snatched away by the miscreants near about Railway Crossing and the miscreants were fleeing along with motorcycle towards Tejta whereupon, they chased and in between Village-Ahuta and Bhurri, the accused persons were apprehended on suspicion along with motorcycle with the assistance of the villagers. On query they both failed to tender the document relating to ownership of the vehicle. During midst thereof, so many persons including informant came who identified both the accused to be members of miscreants who were indulged in snatching his motorcycle and in likewise manner, also identified the motorcycle. On query, both the accused had disclosed their identity as Shahid and Raju Sah. Accordingly, seizure list was prepared, a copy thereof, was served upon respective accused, Fard-e-beyan was recorded, and then thereafter, both the accused were apprehended. On interrogation, accused Shahid made inculpatory extra judicial confessional statement (exhibited). Entrusted the investigation to Arun (PW-6). Then had exhibited all the relevant documents. Then thereafter, they returned back to PS along with accused persons with motorcycle, identified the accused in dock. During cross-examination at para-12, he had stated



that they reached at the place of occurrence at about 8.40 PM (20:40 hours). Seizure list was prepared at 20:45 hours. Formal FIR was drawn up at 23:30 hours. Investigation was entrusted to the Investigating Officer at the place of occurrence itself. In para-13, he had stated that seized motorcycle is not before the court at the time of evidence. In para-19, he had stated that Salman Khurshid was not arrested in his presence. He was not put on TIP. In para-20, he had stated that he reached at the P.O. at 20:40 hours while the occurrence took place at about 7.15 PM. So many villagers had joined with the police in apprehending the accused but he is unable to disclose their names. He had denied suggestion that villagers have apprehended the accused and then handed over to the police. In para-21, he had stated that he is not remembering who had lifted the motorcycle. In para-22, he had further stated that he is not remembering names of the public who had informed him regarding the occurrence. In para-23, 24, he had disclosed the topography of the place of occurrence. In para-29, he had stated that he had not seen both the accused since before the occurrence. He had denied the suggestion that he had not apprehended the accused nor motorcycle was recovered from their possession rather they have been implicated in this case falsely on being produced by the villagers.

13. PW-8 is another police official. During examination-



in-chief, he had stated that on 31.02.2014, he was ASI at Balrajpur Police Station. At that very day, he along with Arun and armed police officials proceeded under the leadership of O/C Rakesh Raman in the evening patrolling. When they reached at Mallikpur Bazar, they were informed with regard to the occurrence and further, the direction whereunder the miscreants were fleeing after snatching the motorcycle whereupon, they chased and during course thereof, at village- Ahuta, two persons were apprehended along with motorcycle. So many persons had assembled there. Seizure list was prepared. Claimed identification of both the appellants. During cross-examination at para-5, he had stated that when they reached at the place of occurrence, the local inhabitants joined in apprehension of the accused but he is unable to disclose the names of those persons who had apprehended each of the accused. There was assemblage of 40-50 persons. It was dark night. In para-10, he had denied the suggestion that he was not at all present at the place of occurrence and at the instance of O/C he has falsely deposed. In para-11, he had further stated that Salman was not apprehended in his presence.

14. PW-9 is a sepoy, namely, Dhananjay. During course of examination-in-chief, he had deposed that he was one of the members of patrolling party under the leadership of O/C, Rakesh Raman. When they reached at village-Mallikpur, O/C had received



information over mobile regarding snatching of motorcycle by miscreants as well as direction wherein they were fleeing. Accordingly, they chased and when they reached in between Ahuta and Bhurri, with the assistance of the villagers, two persons were apprehended riding over a motorcycle. Till then the victim along with others had also arrived. They identified the motorcycle as well as the accused persons for which, seizure list was prepared at the spot. He had also identified the accused in dock. During cross-examination at para-3, he had stated that Salman was not apprehended in his presence. In para-5, he had disclosed that they proceeded from PS on Govt vehicle but he is not remembering the registration number. In para-6, he had stated that they reached at the place where accused were apprehended along with motorcycle at about 8.30, 8.45 PM. He was unable to disclose the boundary at the place of occurrence. About 100-150 persons were assembled there. Out of whom, he had identified 5-7 persons as Zakir, Mansoor, Nazir, Alam and others. At para-7, he had further stated that the victim had arrived at the P.O. and so, he identified him. He disclosed his name Nazir. He had further stated that he had not seen the occurrence. In para-8, he had further stated that they had not apprehended the culprits rather villagers had apprehended them. He is unable to disclose the registration number of the motorcycle. Occurrence was detailed by the informant, Nazir.



15. PW-6 is one of the members of the patrolling party as well as the I.O. He had deposed that on 31.02.2014 in the evening hour as per direction of the Investigating Officer he along with other police officials including armed police persons under leadership of O/C were on patrolling, O/C received an information over mobile with regard to snatching of motorcycle by miscreants and further, the direction towards which miscreants were fleeing over which, they proceeded. When they reached ahead of Ahuta Village, accused persons were apprehended along with the motorcycle. Till then, informant also arrived, identified the accused as well as motorcycle. Gave his Fard-e-beyan. Prepared seizure list. Both the accused persons were apprehended (exhibited). He was entrusted with the investigation at the spot itself. Took up investigation, detailed the P.O., the first place near railway crossing wherefrom motorcycle was snatched and the second P.O. under para-7 wherefrom both the accused as well as motorcycle was apprehended and seized. He had also recorded statement of other witnesses and then thereafter, submitted charge-sheet. He identified the accused. During cross-examination at para-14, he had deposed that only Salman was apprehended by him. He had not apprehended the accused. Fard-e-beyan was scribed in his presence nor seizure list was prepared. In para-15, he had stated that in his presence no signature was put over



seizure list as well as over Fard-e-beyan. In para-16, he had stated that he had seen the accused Raju Sah as well as Shahid Alam in Thana Hajat. In para-17, he had further stated that motorcycle was not seized in his presence. He had further in para 18, stated that Shah Alam and Md. Khushdil are the witnesses of seizure. Then had denied the suggestion that he had conducted faulty investigation.

16. After going through the evidence as referred above minutely, it is evident that by way of suggestion to PW-7, O/C of Balrajpur of the PS, apprehension of both the appellants as alleged has not been denied on the alleged date and time of occurrence and for the that, it has been suggested that the villagers, after apprehending both the appellants, had produced before him. Arrest memo was prepared and both the accused were remanded on the following day, are found additional ground. To substantiate apprehension of accused, there happens to be complete lacking of relevant material to suggest that villagers were hostile to the appellants and in likewise manner, the police officials. Mere being police official, their evidences are not to be distrusted, as they stood similar to independent witness. With regard to seizure, there happens to be no specific cross-examination as, even during course of cross-examining PW-7, it was expected at the end of both the appellants to have challenged the seizure list, more particularly, being production-cum-seizure list. As observed



hereinabove PWs-1 to 5 half heartedly supported the case of the prosecution so far, identification is concerned but they too stated with regard to occurrence and snatching of motorcycle as well as recovery of the same in same sequence. If the evidence is read in its entirety, then in that circumstance, it is apparent that identification of these two appellants as miscreants along with seizure of the motorcycle from their possession is not at all found under dispute. Moreover, as per illustration 'a' of Section 114 of the Evidence Act is also found duly attracted against the appellants.

17. In *State of W.B. v. Mir Mohammad Omar* reported in (2000) 8 SCC 382, it has been held at para-33 as follows:-

“33. Presumption of fact is an inference as to the existence of one fact from the existence of some other facts, unless the truth of such inference is disproved. Presumption of the fact is a rule in law of evidence that a fact otherwise doubtful may be inferred from certain other proved facts. When inferring the existence of a fact from other set of proved facts, the court exercises a process of reasoning and reaches a logical conclusion as the most probable position. The above principle has gained legislative recognition in India when Section 114 is incorporated in the Evidence Act. It empowers the court to presume the existence of any fact which it thinks likely to have happened. In that process the court shall have regard to the common course of natural events, human conduct etc. in relation to the facts of the case.”

18. In the case of *State of Andhra Pradesh v. Vasudeva Rao* reported in AIR 2004 SC 960, it has been held as follows:-

16. Proof of the fact depends upon the degree of



probability of its having existed. The standard required for reaching the supposition is that of a prudent man acting in any important matter concerning him. Fletcher Moulton L.J. in *Hawkins v. Powells Tillery Steam Coal Co. Ltd.* (1911 (1) KB 988) observed as follows:

"Proof does not mean proof to rigid mathematical demonstration, because that is impossible; it must mean such evidence as would induce a reasonable man to come to a particular conclusion".

17. The said observation has stood the test of time and can now be followed as the standard of proof. In reaching the conclusion the Court can use the process of inferences to be drawn from facts produced or proved. Such inferences are akin to presumptions in law. Law gives absolute discretion to the Court to presume the existence of any fact which it thinks likely to have happened. In that process the Court may have regard to common course of natural events, human conduct, public or private business vis-à-vis the facts of the particular case. The discretion is clearly envisaged in [Section 114](#) of the Evidence Act.

18. Presumption is an inference of a certain fact drawn from other proved facts. While inferring the existence of a fact from another, the Court is only applying a process of intelligent reasoning which the mind of a prudent man would do under similar circumstances. Presumption is not the final conclusion to be drawn from other facts. But it could as well be final if it remains undisturbed later. Presumption in law of evidence is a rule indicating the stage of shifting the burden of proof. From a certain fact or facts the Court can draw an inference and that would remain until such inference is either disproved or dispelled.

19. For the purpose of reaching one conclusion the Court can rely on a factual presumption. Unless the presumption is disproved or dispelled or rebutted the Court can treat the presumption as tantamounting to proof. However, as a caution of prudence we have to observe that it may be unsafe to use that presumption to draw yet another discretionary presumption unless there is a statutory compulsion. This Court has indicated so in [Suresh Budharmal Kalani v. State of Maharashtra](#) (1998



(7) SCC 337) "A presumption can be drawn only from facts _ and not from other presumptions _ by a process of probable and logical reasoning".

20. Illustration (a) to [Section 114](#) of the Evidence Act says that the Court may presume that "a man who is in the possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession". That illustration can profitably be used in the present context as well when prosecution brought reliable materials that there was recovery of money from the accused. In fact the receipt and recovery is accepted. The other factor is the acceptability of the plea of loan, which the High Court itself has not held cogent or credible.

19. That being so, there happens to be no perversity in the findings having been recorded by the learned lower court, consequent thereupon, judgment impugned is affirmed. As these appeals are bereft of merit, on account thereof, dismissed.

20. Appellants, who are under custody, will remain till saturation of the sentence.

(Aditya Kumar Trivedi, J)

perwez

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	13.09.2017
Transmission Date	13.09.2017

