

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.667 of 2015

Arising Out of PS.Case No. -49 Year- 2012 Thana -BIHTA District- PATNA

NAND KISHORE RAM SON OF LATE BUDHAN RAM RESIDENT OF  
VILLAGE - BADKA GAUV PONDIL, P.S. KURTHA, DISTRICT - ARWAL  
..... APPELLANT/S  
VERSUS  
THE STATE OF BIHAR  
..... RESPONDENT/S  
WITH

Criminal Appeal (SJ) No. 678 of 2015

Arising Out of PS.Case No. -49 Year- 2012 Thana -BIHTA District- PATNA

AJAY PASWAN @ BADAL SON OF RAM PRAVESH PASWAN RESIDENT  
OF VILLAGE- DARVESH PUR ,P.S MANER, DISTRICT PATNA.  
..... APPELLANT/S  
VERSUS  
THE STATE OF BIHAR  
..... RESPONDENT/S  
WITH

Criminal Appeal (SJ) No. 680 of 2015

Arising Out of PS.Case No. -49 Year- 2012 Thana -BIHTA District- PATNA

ASHOK MAHTO @ ASHOK KUMAR SON OF LATE SURYA NARAYAN  
SINGH RESIDENT OF VILLAGE MAHABALIPUR PS. SULHIN BAZAR,  
DISTRICT PATNA.  
..... APPELLANT/S  
VERSUS  
THE STATE OF BIHAR  
..... RESPONDENT/S  
WITH

Criminal Appeal (SJ) No. 713 of 2015

Arising Out of PS.Case No. -49 Year- 2012 Thana -BIHTA District- PATNA

VIJAY KUMAR SINGH @ VIJAY PRASAD SON OF RADHEY SINGH,  
RESIDENT OF VILLAGE- CHERAITI DIH, P.S. KHIZAR SARAI, DISTRICT-  
GAYA  
..... APPELLANT/S  
VERSUS  
THE STATE OF BIHAR  
..... RESPONDENT/S

Appearance:

(In CR. APP (SJ) No.667 of 2015)

For the Appellant/s : Mr. Vikramdeo Singh, Adv.  
Mr. Paras Nath, Adv.  
For the State : Smt. Abha Singh, APP  
Mr. Bipin Kumar, APP  
Sujeet Kr. Singh, APP



(In CR. APP (SJ) No.678 of 2015)

For the Appellant/s : Mr. Vikramdeo Singh, Adv.  
Mr. Paras Nath, Adv.  
For the State : Smt. Abha Singh, APP  
Mr. Bipin Kumar, APP  
Sujeet Kr. Singh, APP

(In CR. APP (SJ) No.680 of 2015)

For the Appellant/s : Mr. Vikramdeo Singh, Adv.  
Mr. Paras Nath, Adv.  
For the State : Smt. Abha Singh, APP  
Mr. Bipin Kumar, APP  
Sujeet Kr. Singh, APP

(In CR. APP (SJ) No.713 of 2015)

For the Appellant/s : Mr. Rabindra Kumar, Adv.  
For the State : Smt. Abha Singh, APP

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**CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI**

**ORAL JUDGMENT**

**Date: 11-07-2017**

Criminal Appeal (SJ) No.667 of 2015 wherein Nand Kishore Ram is the appellant, Criminal Appeal (SJ) No. 678 of 2015 wherein Ajay Paswan @ Badal is the appellant. Criminal Appeal (SJ) No. 680 of 2015 wherein Ashok Mahto @ Ashok Kumar is the appellant and Criminal Appeal (SJ) No. 713 of 2015 wherein Vijay Kumar Singh @ Vijay Prasad is the appellant commonly originate against the judgment of conviction and sentence dated 09.09.2015 passed by Additional Sessions Judge, IInd, Danapur, Patna in Sessions Trial No.1443/2012 whereby and whereunder all the appellants have been found guilty for an offence punishable under Section 395/34 of the IPC and each one has been directed to undergo R.I. for ten years as well as to pay fine appertaining to Rs.5000/- in default thereof, undergo S.I. for six months.

2. Before coming to descant the appeal on its merit, from the judgment impugned, it is evident that the learned lower court did



not consider the ingredients of the Section 395 IPC and that happens to be reason behind having a conclusion at the end of the learned lower court identifying the appellants to be guilty under Section 395/34 of the IPC. 34 is not applicable relating to offence punishable under Section 395 IPC because of the fact that definition of dacoity itself divulges presence of more than five persons. That being so, the learned Presiding Officer, henceforth will try to keep the basic feature, ingredients and the requirement of law while adjudicating upon the lis.

3. Prosecution case, as is evident from the fardbeyan of Ranjan Kumar Chaudhary, PW.1, Branch Manager, Canara Bank, Pareb Branch, recorded on 27.02.2012 at about 03:30 PM is to the effect that on the same day at about 02:40 PM during course of recess hour while the bank officials were taking lunch, the arm burglar appeared who overpowered them on the pretext of firearm and then, thereafter, decamped with the cash appertaining to Rs.17,96,450/- whereupon, Bihta P.S. Case No.49/2012 was registered against unknown. It is also evident that during course of investigation so many persons including appellants were apprehended along with firearms, alleged booty and that being so, charge sheet was submitted under Section 395, 412/34 of the IPC which ultimately led passage to trial meeting with ultimate result, the subject matter of instant appeal.

4. Defence case, as is evident from mode of cross-examination as well as statement recorded under Section 313 of the Cr.P.C. is of complete denial. In likewise manner, all the appellants



have claimed the cash which has been alleged to have recovered from their possession and for that, they have also examined DWs as well as exhibited the documents including passbook.

5. In order to substantiate its case, prosecution had examined altogether fifteen PWs out of whom PW.1 is Ranjan Kumar Chaudhary, PW.2 is Mahesh Kumar, PW.3 is Dinesh Prasad, PW.4 is Md. Anjum Asgar, PW.5 is Sheo Dayal Rai, PW.6 is Raju Kumar, PW.7 is Rajesh Kumar, PW.8 is Nirmal Kumar, PW.9 is Uday Kumar, PW.10 is Pankaj Kumar, PW.11 is Lal Babu Rai @ Lal Babu Yadav, PW.12 is Manohar Sao, PW.13 is Rajesh Kumar Sharma, PW.14 is Binay Krishna, PW.15 is Iswardeo Ram. Side by side also exhibited relevant document as Ext.1-Signature of Ranjan Kumar Chaudhary over Fardbeyan, Ext.2,3,4 and 5-Signature of Sheo Dayal Ram over seizure list, Ext.6-Signature of witness Nirmal Kumar over seizure list (photocopy).

6. Defence had also examined Rameshwar Prasad (DW.1) on behalf of Ashok Kumar who had also exhibited Ext.1 Series, DW.2-Santosh Kumar on behalf of appellant Nand Kishore Ram as well also proved Ext.B while on behalf of Ajay Paswan @ Badal one witness Mangal Sao has been examined.

7. From the record, it is evident that no charge under Section 412 of the IPC has been framed against any of the accused. It is further evident that during course of investigation having been conducted by PW.14 Binay Krishna, he got information through spy



regarding involvement of Ajay Paswan group who was apprehended and from his possession, it has been alleged that firearm, cash appertaining to Rs.10,000/- bearing monogram of Canara bank were seized who, during course of inculpatory extra judicial confessional statement divulged that remaining amount has been spent over purchase of thresher, engine which were also seized. On his inculpatory confessional statement raid was conducted at the house of Kishori Ram wherefrom other appellants were arrested along with arms, cash. Even during course of investigation none of the appellants were put on T.I. Parade and the same status continued even during trial also, as none of the bank officials claimed identification of these appellants in court and so, the prosecution lacks the evidence regarding connectivity of these appellants being dacoit who actively participated during course of an occurrence having committed on 27.02.2012.

8. During course of argument, learned counsel for the appellant has been requested to assist the court to arrive at a just conclusion over fate of the appellants relating to an offence punishable under Section 412 of the IPC in absence of charge having against them for the aforesaid offence in the background of section 221 of the IPC read with Section 464 of the Cr.P.C. and further the principle decided by the Constitution Bench of the Hon'ble Apex Court in *Willie (William) Slaney vs. State of Madhya Pradesh* reported in *AIR 1956 SC 116* giving a seal of permissibility on that very score in the



background of recovery of cash in huge quantity from respective possession of the appellants. During course thereof, the ambit and scope of the Section 27 of the Evidence Act has also been taken into consideration and further deficiency on the part of the appellant while claiming, explaining presence of such huge quantity of cash whereupon the learned counsel for the appellant has submitted that appellants would not be liable to be convicted under instant prosecution because of the fact that (a) there happens to be proper explanation at the end of the appellant, (b) Even negating the same, it was incumbent upon the prosecution to have led sufficient evidence in order to prove connectivity, (c) the cash so recovered from the possession of the appellant would not be held to be stolen property in terms of deficiency having prescribed under Section 410 of the IPC.

And that being so, the court could not exercise its avenue towards Section 221 of the Cr.P.C. read with Section 464 of the Cr.P.C. in order to hold the appellant guilty for an offence punishable under Section 412 of the IPC.

**9.** Learned Additional Public Prosecutor fairly concedes that as the recovered cash has not been put on T.I. Parade, no description has been given by the bank officials either during investigation stage nor during course of trial and in likewise manner, having not claimed the material exhibit, in absence thereof, the amount would not be stamped as stolen property in terms of Section 410 of the IPC.



**10.** The learned Additional Public Prosecutor is right in submitting that on account of paucity of evidence at the end of prosecution in having failed to identify the property to be looted one and to connect the property to be the booty on account thereof, appellant could not be held guilty for an offence punishable under Section 412 of the IPC.

**11.** That being so, the judgment of conviction and sentence would not survive accordingly set aside. Appeal is allowed. All the appellants are under custody hence are directed to be released forthwith, if not wanted in any other case.

**(Aditya Kumar Trivedi, J.)**

Prakash Narayan

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