

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.1545 of 2017

Arising Out of PS.Case No. -75 Year- 2013 Thana -BANIAPUR District- SARAN

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Sudama Rai @ Sudama Kumar Rai, Son of Late Jharilal Rai, resident of Village- Bindalal Ke Rampur (Rampur Bindalal), P.S.- Ekma, District- Saran.

.... Appellant/s

Versus

The State of Bihar.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate
Mr. Nilesh Kumar, Advocate
Mr. Malay Kumar Choudhary, Advocate
For the State : Mr. Binod Bihari Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT

Date: 27-11-2017

The appellant Sudama Rai @ Sudama stands convicted under Section 412 of the Indian Penal Code vide judgment dated 18th of April, 2017, passed by the learned 1st Additional District & Sessions Judge, Saran at Chapra in Sessions Trial No. 211 of 2015, arising out of Baniyapur P.S. Case No. 75 of 2013. Vide order 24.04.2017, the appellant has been sentenced to undergo RI for ten years, to pay a fine of Rs. 10,000/- and in default of payment of fine, to further suffer simple imprisonment for six months.

2. The appellant was put on trial for the offences under Sections 395, 397, 412 of the Indian Penal Code. He has been, by the impugned judgment of conviction acquitted for the offences under Sections 395, 397 of the Indian Penal Code.

3. Yogeshwar Ram (P.W. 4) who had lodged the



First Information Report on 03.04.2013, alleged that while he along with others was carrying cash of Rs. 1,25,00,000/-(one crore twenty five lacs) from the Punjab National Bank, Chapra Branch to his own Branch, his Bolero vehicle was surrounded by four to five motorcycle borne miscreants and the money was taken away. The miscreants fled towards southern direction and while effecting their escape, they also threw away their weapons of assault. It has been alleged that the firing resorted by two of the miscreants led to injuries on the person of Narayan Mahto (P.W.-3) and Kusheshwar Sharma (P.W.-2).

4. On the basis of the aforesaid fardbeyan statement made by Yugeshwar Ram (P.W. 4), Baniyapur P.S. Case No. 75 of 2013 dated 03.04.2013 was registered for investigation for the offences under Sections 395, 397 and 412 of the Indian Penal Code.

5. During the course of investigation, the appellant was arrested and on his disclosure statement, Rs. 4,14,000/- (four lacs fourteen thousand) was recovered from a poultry farm belonging to the appellant. Apart from the aforesaid cash, certain documents in the nature of fixed deposits, deposits in LIC and other schemes were also recovered from the possession of the appellant.

6. After completion of the investigation, charge-sheet was submitted against the appellant, whereupon cognizance was taken and the case was put up for trial.



7. The Trial Court, after examining nine witnesses on behalf of the prosecution and none on behalf of the defence, acquitted the appellant for the offences under Sections 395, 397 of the Indian Penal Code but, for the recovery of Rs. 4,14,000/- from the appellant convicted for the offence under Section 412 of the Indian Penal Code by the impugned judgment of conviction and by order of sentence dated 24.04.2017 sentenced him to undergo RI for ten years, to pay a fine of Rs. 10,000/- and in default to payment of fine, to further suffer simple imprisonment for six months.

8. None of the prosecution witnesses including the informant have identified the appellant.

9. Shankar Sah (P.W.-1), though has supported the prosecution version of the miscreants taking away the money after breaking the glass of the Bolero vehicle, but has expressed his inability to identify the appellant. Similarly, the other prosecution witnesses have also supported the prosecution version but have not said anything about the identification of the appellant.

10. Abhishek Kumar Mishra (P.W. 8), who is a witness to the search and seizure, has deposed in his examination-in-chief that the house of the appellant was not searched and he has only claimed to have identified his signature on the search and seizure list (Ext-2).

11. Mr. Ajay Kumar Thakur, learned advocate



submits that P.W.-8 who could only be a competent witness to depose about the recovery of the money from the poultry farm of the appellant, has, in his cross-examination, stated that he had put his signature on an empty/blank paper which was made into a seizure list.

12. Raghunath Prasad (P.W.-9), who is the Investigating Officer (I.O) of this case, has also not said anything which could fix the liability on the appellant.

13. Thus, the only material before the Trial Court was the so-called confession of the appellant which led to the recovery of Rs. 4,14,000/- from the poultry farm. That recovery also cannot be taken into account, it has been argued, since the seizure list and the recovery could not be proved. Merely because some of the policy bonds, pass books of the banks and infrastructure bonds were found from the possession of the appellant, it has been argued, that cannot be taken into account for holding the appellant liable for the offence under Section 412 of the Indian Penal Code.

14. Considering the aforesaid facts, the Trial Court acquitted the appellant for the offences under Sections 395 & 397 of the Indian Penal Code. No fault could be found with the aforesaid judgment of the Trial Court.

15. So far as the conviction under Section 412 of the Indian Penal Code is concerned, there is no material whatsoever to justify the conviction of the appellant for the aforesaid Section. As has



been stated, Abhishek Kumar Mishra (P.W.-8) and Raghunath Prasad (P.W. 9) only could have testified to the fact about the recovery of the aforesaid amount from the possession of the appellant. That not having been done, the prosecution case fails at the seams.

16. Accordingly, the judgment of conviction dated 18.04.2017 and the order of sentence dated 24.04.2017 passed by the learned 1st Additional District & Sessions Judge, Saran at Chapra in Sessions Trial No. 211 of 2015, arising out of Baniyapur P.S. Case No. 75 of 2013 is, therefore, set aside.

17. The appeal is allowed.

18. The appellant is directed to be released from jail forthwith, if not wanted in any other case.

19. A copy of the judgment be sent to the Superintendent of Jail, Chapra for compliance of the order.

(Ashutosh Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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