

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.110 of 2002

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

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Jamuna Yadav, son of Late Sheobarat Yadav, resident of village Mirakpur, P.S.
Wazirganj, District Gaya (Bihar). Appellant.

Versus

The State of Bihar. Respondent.

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Appearance :

For the Appellant/s : Mr. Birendra Singh, Adv.
Mr. Sanjay Kumar Sharma, Adv.
For the State : Mr. Bipin Kumar, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL
ORAL JUDGMENT

Date: 06-11-2017

Heard learned counsel for the appellant and learned
A.P.P. for the State on this criminal appeal.

2. This criminal appeal has been preferred against
the judgment and order of conviction and sentence dated
18.02.2002 passed by the Fast Track Court II, Gaya in Sessions
Trial No.260 of 2001/311 of 1995, arising out of Wazirganj P.S.
Case No.109/95, whereby the learned trial Court convicted the
accused Jamuna Yadav for the offence punishable under Section
395 of the Indian Penal Code and sentenced him to undergo
rigorous imprisonment for seven years for the said offence.

3. The factual matrix of the case is that Wazirganj
P.S. Case No.109/95 was instituted under Section 395 of the
Indian Penal Code against 10-15 unknown miscreants on the basis
of fardbeyan of Ravindra Kumar Sinha, son of Late Raja Prasad



Sinha, resident of village Rajapur Etwan, P.S. Wazirganj, District Gaya recorded by S.I. Ashok Kumar Sinha, of Wazirganj Police Station on 11.09.1995 at 1 AM with the allegation in succinct that in the night of 10.09.1995 at about 8:30 PM when the informant along with his family members was sitting in his courtyard, abruptly 10-15 unknown miscreants intruded there on quizzing about their identity one of them claimed themselves to be party man and assured him to leave the place after fetching water. One of them also claimed that they have kept fire arms in his house and they would make search of the house and asked them to congregate at the place. When the family members of the informant congregated at the place, they made them hostage in a room and two miscreants stood in guard while other miscreants intruded into the rooms of his house and committed dacoity and then they decamped with booty. They identified the miscreants in the light of bulb lighting in his house.

4. The aforesaid case was investigated by the police and on conclusion of the investigation, I.O. submitted chargesheet against the accused Jamuna Yadav only under Section 395 of the Indian Penal Code.

5. On receiving the chargesheet and the case diary and perusing the same, the learned Magistrate took cognizance of



the offence against the said accused and committed the case to the Court of Sessions and on transfer finally the case came in seisin of Fast Track Court II, Gaya.

6. The charge against the accused person was framed under Section 395 of the Indian Penal Code and the charge was read over and explained to him, to which he pleaded not guilty and claimed to be tried.

7. To substantiate its case, in ocular evidence, the prosecution has examined altogether seven prosecution witnesses, namely, Anand Kumar Sinha as P.W.1, Anil Kumar Sinha as P.W.2, Jaya Sinha as P.W.3, Punam Sinha as P.W.4, Archana Sinha as P.W.5, Ravindra Kumar Sinha (informant) as P.W.6, and Sri B.N. Pandey, the then Judicial Magistrate, Gaya as P.W.7. In documentary evidence, the prosecution has filed and proved several documents.

8. Statement of the accused was recorded under Section 313 Cr.P.C. The case of the defence is complete denial of the occurrence claiming himself to be innocent. In buttress of his case, in ocular evidence, the accused has examined for witnesses, namely, Gajendra Singh as D.W.1, Nilima Devi as D.W.2, Dinesh Nandan Verma as D.W.3 and Arbind Kumar D.W.4. In documentary evidence, the defence has filed and proved certified



copy of the sale deed dated 05.03.1968 executed by Shiv Barat Gope (father of the accused) in favour of informant's brother Arbind Kumar marked as Ext.1.

9. After hearing the parties and perusing the record, the learned trial Court passed the impugned judgment and order of conviction and sentence as detailed in earlier paragraph.

10. Being aggrieved and dissatisfied with the aforesaid judgment and order of conviction and sentence, the convict has preferred this criminal appeal.

11. The point for consideration in this appeal is, as to whether the prosecution has been able to bring home the charge levelled against the appellant beyond all reasonable doubts or not.

12. It is submitted by learned counsel for the appellant that the appellant is pre-acquainted to the prosecution party as father of the appellant has executed a sale deed dated 05.03.1968 in favour of brother of the informant much earlier to the occurrence and informant has claimed to have identified the miscreants during the course of occurrence in the bulb light but he has not named the appellant in the occurrence in the fardbeyan, which creates serious doubt about complicity of the appellant in the occurrence. It is further submitted that all the



material witnesses examined by the prosecution, who happens to be informant, his brothers, sisters and sister-in-law, are highly interested witnesses. There is no independent witness of the occurrence. Hence, the evidence of aforesaid highly interested witnesses does not stand corroborated by the independent witness. Nothing incriminating article has been recovered from the possession of the appellant. He had not taken any active part in the occurrence as as per the witnesses' account, he was standing in the courtyard. It is further submitted that the appellant is aged about 70 years and has faced the rigours of trial for a long period of time of about 22 years and he has already been in custody for about three years. Hence, he may be acquitted taking lenient view in the case.

13. On the other hand, learned A.P.P., advocating the correctness and validity of the impugned judgment & order of conviction, has submitted that all the material witnesses examined by the prosecution have supported the prosecution case in toto. Though there is no independent witness of the occurrence as the house of the informant is located at desolate place about two kilometers away from the village and the occurrence took place in the night so absence of the independent witness at the time of occurrence is natural. It is further submitted that the



appellant was also identified by three witnesses in T.I.P. and in the Court. The learned trial Court correctly appreciating the material and evidence available on record has rightly passed the impugned judgment and order of conviction and sentence which is liable to be upheld and this appeal has no substance in it and is liable to be dismissed.

14. From perusal of the record, it appears that in the night of 10.09.1995, 10 to 15 persons armed with firearm are said to have intruded in the courtyard of the informant and making the inmates of the house hostage in a room committed dacoity in his house and decamped with booty. The miscreants were identified by the informant and his family members in the bulb light during the course of occurrence. To substantiate its case, the prosecution has examined six material witnesses of the occurrence. From perusal of the testimonies of the aforesaid witnesses, it appears that the said witnesses have unanimously & consistently stated in their examination-in-chief that at the time of occurrence, while they were sitting at their courtyard of their house abruptly 10-15 miscreants armed with firearm intruded there. They made them hostage in a room of the house and committed dacoity in their house and decamped with booty. They have identified the miscreants in the bulb light lighting in the house during the



course of occurrence. Though the aforesaid witnesses happens to be informant, his brothers, sisters and sister-in-law and interested witnesses of the case but it is settled principle of law that the testimony of the interested witnesses should not be rejected outrightly rather it should be scanned and scrutinized carefully and cautiously. After careful scanning and scrutiny of the testimonies of the aforesaid witnesses who were subjected to lengthy cross-examination it appears that their testimonies are consistent, & trustworthy and nothing convincing & cogent have been elicited in their cross-examination having potential to shatter the testimonies of the said witnesses and to rule out their presence at the place of occurrence and witnessing the occurrence by them.

15. From perusal of the record, it appears that the place of occurrence is located at a distance of two kilometers from the village and the occurrence is said to have taken place in the night, so presence of the independent witnesses at the time and place of occurrence is not expected. Hence, non-examination of any independent witness by the prosecution, in my considered opinion, does not affect the merit of the case.

16. From perusal of the record, it appears that the appellant was identified by witnesses, namely, Punam Sinha (P.W.4), Jaya Sinha (P.W.3) and Archana Sinha (P.W.5) in T.I.P.



The said witnesses have also identified the appellant in dock as the accused in the occurrence. The then Judicial Magistrate 1st Class, Gaya who has conducted the T.I.P. has been examined by the prosecution as P.W.7,. The said witness has also corroborated the factum of conducting the T.I.P. of the appellant by him and identification of the appellant by the aforesaid witnesses in T.I.P. before him. On perusal of the testimony of the aforesaid witnesses and T.I.P. chart marked as Ext.2, I do not find any irregularity made by the Magistrate in conducting the T.I.P.

17. Though the I.O. of the case has not been examined by the prosecution but as all the witnesses examined by the prosecution have supported the place of occurrence by stating that the said occurrence took place in the courtyard of their house. Non-examination of the I.O., in my considered opinion, has no potential to have any adverse impact on the prosecution case.

18. Thus, in the aforesaid facts and circumstances, I find that the prosecution has substantiated its case and charge levelled against the appellant by adducing consistent, trustworthy, reliable ocular and documentary evidence. Hence, the impugned judgment and order of conviction passed by the learned trial Court does not warrant any interference of this Court and is accordingly upheld.



19. So far as the quantum of sentence is concerned, from perusal of the record, it appears that the appellant is aged about 65 years and he has faced the rigours of trial for about 22 years. He has also remained in custody for around three years. Hence, in the aforesaid facts and circumstances, the sentence awarded by the learned trial Court is reduced to the period of custody already undergone by the appellant.

20. Accordingly, this appeal is dismissed with the aforesaid modification in the sentence.

(Prakash Chandra Jaiswal, J.)

Trivedi/-

AFR/NAFR	NAFR
CAV DATE	NA
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