

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.535 of 2017

Arising Out of PS.Case No. -324 Year- 2014 Thana -
WAJIRGANJ District- GAYA

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Anil Yadav, S/o Madheshwar Yadav @ Madheshan Yadav,
Resident of Village- Dema Tola, Pathra, P.S.- Mohanpur, District-
Gaya.

.... Appellant/s

Versus

The State of Bihar.

.... Respondent/s

with

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Criminal Appeal (SJ) No. 753 of 2017

Arising Out of PS.Case No. -324 Year- 2014 Thana -
WAJIRGANJ District- GAYA

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Dhirendra Paswan, Son of Devnandan Paswan, resident of village
- Deokali, P.S. Guraru, District - Gaya

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

(In CR. APP (SJ) No.535 of 2017)

For the Appellant/s : Mr. Krishna Prasad Singh, Sr.Adv
Mrs. Meena Singh, Adv

For the State : Ms. Abha Singh, APP

(In CR. APP (SJ) No.753 of 2017)

For the Appellant/s : Mr. Gouranga Chatterjee, Adv

For the State : Mr. Sujit Kumar Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT

Date: 18-07-2018

Both the appeals have been heard together and they
are being disposed of by this common judgment.



The appellants have been convicted under Section 412 of the Indian Penal Code by judgment dated 12.01.2017 passed by the learned 5th Additional District & Sessions Judge, Gaya in Sessions Trial No. 220/14/504/14 and by order dated 16.01.2017, they have been sentenced to undergo rigorous imprisonment for ten years, to pay a fine of Rs. 20,000/- and in default of payment of fine, to further suffer imprisonment for four months.

By the aforesaid judgment, the appellants have been acquitted of the charge under Section 395 of the Indian Penal Code.

One Md. Rayees, who has not been examined, lodged a fardbeyan alleging that on 16.07.2014 at about 12:30 A.M. in the night, his truck which was loaded with wood was intercepted by a bus on which "Rajbanshi" was written. Three to four persons had got down from the aforesaid bus and after tying him with his wearing apparel, took away the truck. Somehow or the other, with the help of two persons, one being a woman, he could manage to extricate himself. In the meantime, a police jeep was spotted by him and the Police Officer riding the aforesaid vehicle was made to know about the occurrence. The aforesaid Police Officer communicated the fact of *dacoity* to other Police Officers of different Police Stations. Many Police Officers on different vehicles starting chasing the miscreants. In



the meantime, aforesaid Md. Rayees could spot his truck and the bus by which his truck was intercepted. The aforesaid two vehicles were overtaken by the Police vehicles and the appellants were arrested. Some of the miscreants managed to run away. From the possession of the appellant/Anil Yadav, a country made pistol and two live cartridges were recovered. Two mobile phones were also found from the possession of the appellants.

On the basis of the aforesaid fardbeyan statement of Md. Rayees, Wazirganj P.S. Case No. 324 of 2014 dated 17.07.2014 was instituted for investigation for the offence under Section 395 of the Indian Penal Code.

The police, after investigation submitted charge-sheet against the appellants and two others and the investigation with respect to co-accused Sudama Yadav was kept pending. The other two accused persons who were charge-sheeted along with the appellants were Jitendra Rai and Guddu Rai. Jitendra Rai could not face the trial as he died midway and Guddu Rai has been acquitted of all the charges. Sudama Yadav was also tried along with the appellants after charge-sheet was submitted against him but he too has been acquitted by the Trial Court.

The learned Trial Court, after examining four witnesses on behalf of the prosecution though acquitted the



appellants of the charge under Section 395 of the Indian Penal Code but convicted and sentenced them for the offence under Section 412 of the Indian Penal Code and directed them to suffer imprisonment for ten years and to pay a fine of Rs. 20,000/- and in default of payment of fine, to further suffer imprisonment for four months.

Mr. Krishna Prasad Singh, learned senior advocate for the appellants while assailing the judgment and order of conviction has stated that the informant of this case has not been examined and no explanation has also been offered for his non-examination. He has further submitted that the seizure list does not bear the signature of the appellants and therefore it was not established at the trial that the appellants were caught with the loaded truck. He has also submitted that the deposition of the four witnesses, all of whom are official/police witnesses are contradictory, thereby making the prosecution case highly doubtful and suspect in the eyes of law. There is no reference of the recovery of wood which is said to have been loaded on the aforesaid truck. The ownership of the truck or the bus which was used for intercepting the truck also could not be established. The so called independent persons, it has been argued, who have been shown as witnesses to the seizure have also not been examined and no explanation also has been offered for their non-examination.



The records reveal that Shashi Bhushan Singh, Officer-in-charge of Bodh Gaya Police Station, who has been examined as P.W. 4 has deposed that on 17.07.2014 while he was posted as Officer-in-charge of Wazirganj Police Station, he come out on road for night patrolling. While returning, when he reached near Sahiya, he found one person standing on the road who was indicating him to stop. The aforesaid witness stopped his vehicle and he was stated by the person standing on the road that he was a truck driver who was looted by the miscreants, who had used a bus to commit *dacoity*. The aforesaid witness has further stated that he made the truck driver sit on his jeep and moved towards the west in which direction, the miscreants had run away. He also informed telephonically to other Police Station. He has further deposed that he first went to Muffasil Police Station and collected other Police Officers and armed forces and thereafter moved towards the bypass for apprehending the miscreants. Near Chularhi crossing, the looted truck and the bus which was used in the loot were spotted. By overtaking the aforesaid two vehicles, the appellants were arrested. From the possession of the appellant/Anil Yadav, a country made pistol and two live cartridges were recovered.

Mr. Krishna Prasad Singh, learned senior advocate for the appellants has submitted that this statement of the P.W. 4 cannot be accepted to be correct as the Police Officers of Muffasil



Police Station did not testify to the fact that P.W. 4 had come to the Muffasil Police Station and had collected the other Police Officers and armed forces for the purposes of chasing the miscreants. In fact, the other Police Officers who were posted at Muffasil Police Station and who have been examined as P.W. 2 and P.W. 3 have narrated different version of the occurrence.

Nivash Kumar/P.W. 2, at the relevant time was posted in Muffasil Police Station. He has deposed that he had gone out along with the Police Inspector for evening patrolling when he learnt that a *dacoity* had taken place within the territorial jurisdiction of Wazirganj Police Station. The Police Team of the Muffasil Police Station came at Bhusunda More and started chasing the vehicles plying on the road. In the meantime, a truck which was being driven in a very high speed was spotted. Thereafter, the aforesaid vehicle was followed by a bus. The aforesaid witness also saw the vehicle of Wazirganj Police Station, which too was following the aforesaid two vehicles. The truck and the bus were overtaken at some distance and the appellants were arrested. A seizure list was prepared and the seized vehicles as well as the appellants were brought to the Police Station. He has proved the seizure list (Ext-2). The truck, bus and the appellants were allegedly handed over to the Wazirganj Police Station. With respect to the recovery of the aforesaid fire arm, a case was instituted at Gaya Muffasil Police



Station.

Rajendra Prasad who also was posted in the Muffasil Police Station has been examined as P.W. 3. He has deposed that the information about the *dacoity* was transmitted on telephone from Wazirganj Police Station. He along with his associates came out of the Police Station in search of the miscreants and in the meantime, Wazirganj Police also arrived there. All of them together chased and caught hold of the two vehicles and the appellants.

The aforesaid statements of P.W.2 and P.W. 3 are not in consonance with what the Investigating Officer has narrated before the Trial Court.

Ram Chandra Prasad, who has investigated this case and at the relevant time was posted at Wazirganj Police Station has deposed that on 17.07.2014, he took up the charge of investigation and recorded the statement of Shashi Bhushan Singh, the Officer-in-charge of Bodh Gaya Police Station. He also visited the place of occurrence but did not find any incriminating materials at that place. However, in his cross-examination, he has deposed that the fardbeyan of Md. Rayees was recorded in the Muffasil Police Station. This also does not appear to be correct in as much as the F.I.R was registered at Wazirganj Police Station on 17.07.2014. He has further admitted that the



F.I.R was registered at about 7 O' Clock in the morning when he learnt about the occurrence. In para 7 of his cross-examination, he has further testified to the fact that the seizure list was not prepared at the spot. He did not examine any independent person and the seizure list was also not prepared before him, rather it was prepared near Chularhi crossing.

Thus, from the conspectus of the deposition of the aforesaid witnesses, it appears that there is no unanimity in their deposition with respect to the place where the F.I.R was registered and the seizure list was prepared. The non-examination of the informant/Md. Rayees and the two seizure list witnesses have only made the prosecution case even with respect to Section 412 of the Indian Penal Code to be suspect in the eyes of law. In the absence of any endorsement of the appellants in the seizure list, it cannot be said with certainty that the appellants were arrested with the truck. Whether the aforesaid truck was the looted truck and whose truck was it, could not be established because of the non-examination of the victim/driver/informant/Md. Rayees.

Though the appellants are said to have been arrested on hot chase and within a short interval of time but the evidence with respect to their being arrested along with the looted truck is deficient. It is difficult to rely upon the deposition of the aforesaid Police witnesses when there are two versions of the



preparation of the seizure list. One of the witnesses has stated that the seizure list was prepared at the place of recovery whereas the other witness has stated that the seizure list was prepared in Wazirganj Police Station. This minor contradiction would normally not have made the prosecution case doubtful but in the absence of any definite proof of the appellants having been arrested with the looted truck, the offence under Section 412 of the Indian Penal Code cannot conclusively be said to have been made out as against the appellants. Though the appellants have not stated anything in their defence under Section 313 of the Code of Criminal Procedure, nonetheless it is the duty of the prosecution first to establish the charge against the accused persons.

Since there was no witness to the factum of *dacoity*, the appellants have rightly been acquitted by the Trial Court for the aforesaid offence under Section 395 of the Indian Penal Code.

For the reasons stated above, the verdict of guilt for the charge under Section 412 of the Indian Penal Code and the sentence imposed upon the appellants cannot be justified in the eyes of law.

The appellants have to be given the benefits of doubt.

In that view of the matter, judgment and order of



conviction and sentence dated 12.01.2017 and 16.01.2017 respectively passed by the learned 5th Additional Sessions Judge, Gaya in Sessions Trial No. 220/14/504/14, arising out of Wazirganj P.S. Case No. 324 of 2014 is set aside.

The appeals are allowed.

The appellants are acquitted of all the charges.

The appellants are in custody. They are directed to be released from jail forthwith, if not wanted in any other case.

A copy of the judgment be transmitted to the Superintendent of the concerned jail for information, compliance and record.

(Ashutosh Kumar, J)

Shageer/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	20/07/2018
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