

IN THE HIGH COURT OF JUDICATURE AT PATNA**Criminal Appeal (SJ) No.302 of 2015**

Arising Out of PS.Case No. -265 Year- 2013 Thana -GOPALGANJ CITY District- GOPALGANJ

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Sanjay Singh, son of Ram Barai Singh, resident of village-Ekderwa, P.S. Gopalganj Town, District-Gopalganj.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Animesh Kumar Mishra-Amicus Curiae

For the Respondent/s : Mr. Sujit Kumar Singh-A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 13-03-2018

On call, learned counsel for the appellant is absent, on account thereof, Sri Animesh Kumar Mishra has been requested to assist the Court as an Amicus Curiae.

2. Appellant, Sanjay Singh has been found guilty for an offence punishable under Section 399 of the I.P.C. and sentenced to undergo R.I. for seven years as well as to pay fine appertaining to Rs.3,000/- and in default thereof, to undergo R.I. for three months, additionally, under Section 402 of the I.P.C. and sentenced to undergo R.I. for five years with a further direction to run the sentences concurrently vide judgment of conviction dated 27.04.2015 and order of sentence dated 29.04.2015 passed by the 3rd Additional Sessions Judge, Gopalganj in Sessions Trial No.152 of 2014.



3. Shailendra Kumar (PW-9) recorded his self-statement on 27.06.2013, disclosing therein that while he along with other police official namely A.S.I. Prakash Kumar (PW-6), A.S.I. Amit Kumar Singh (PW-5), A.S.I. Gautam Kumar (PW-10), A.S.I. Chandrashekhar Azad (PW-3) along with Constable Rafail Dhanwar (not examined), Sepoy Anil Kumar Singh (not examined), Sepoy Ramashray Pal (not examined), Sepoy Kush Kumar Yadav (not examined), A.S.I. Ram Babu Vishwakarma (not examined) and Chaukidar Kundan Manjhi (PW-7) were on patrolling during course thereof, at about 1.30 a.m. while they were at Konhawa Mor, they got confidential information that renowned criminal of Derwan village, who has just now been released from Jail along with his associate, is sitting at an orchard of Rajendra Bherihar and is planning to commit an offence. The aforesaid confidential information was passed over to superior police officials. At that very time, Officer-in-Charge of Kuyaykot P.S. Ravi Shankar Prasad (PW-8) along with police personnel A.S.I. Bijendra Paswan (PW-4), Sepoy Sanoj Kumar Suman (not examined), Sushil Kumar (not examined), Madan Mishra (not examined), Sitaram Rai (not examined) came and informed that they have got some sort of confidential information with regard to presence of accused persons of Kuyaykot P.S. Case No.139 of 2013, whereupon they both conjointly conducted raid at orchard of Rajendra Bherihar and during course



thereof, the criminals after firing, ran away there from, who were chased and during course thereof, three persons were apprehended while remaining managed to escape. The persons, who were apprehended, disclosed his identity as Sanjay Singh, son of Ram Barai Singh of village-Ekderwan, Farman Ali, son of Mehndi Hasan of village-Jagmalwa, Pratap Kumar Yadav, son of Ramashray Yadav of village-Hahora Tola. On search, from the possession of Sanjay Singh, a countrymade loaded pistol, one Nokia Mobile, from the possession of Farman Ali, one countrymade loaded pistol, mobile, from the possession of Pratap Kumar Yadav, a countrymade loaded pistol and mobile were seized. One Appache motorcycle has also been recovered from the place of occurrence. So many mobile sets were found and for that, relevant seizure list were prepared. On query, they failed to explain possession thereof. On interrogation, Sanjay Singh also disclosed that they have snatched away motorcycle on 15.06.2013 from Patnakutti within Kuyaykut P.S. jurisdiction.

4. After registration of Gopalganj P.S. Case No.265 of 2013, investigation commenced and concluded by way of submission of chargesheet. On the basis of which, trial commenced and concluded in a manner, subject matter of instant appeal.

5. Defence case, as is evident from mode of cross-examination as well as statement under Section 313 of the Cr.P.C. is



that of complete denial. However, neither ocular nor documentary evidence has been adduced on behalf of defence.

6. In order to substantiate its case, prosecution had examined altogether ten PWs, out of whom, PW-1, Raj Narayan Singh, PW-2, Surendra Yadav, PW-3, Chandrashekhar Azad, PW-4, Bijendra Paswan, PW-5, Amit Kumar Singh, PW-6, Prakash Kumar, PW-7, Kundan Manjhi, PW-8, Ravi Shankar Prasad, PW-9, Shailendra Kumar and PW-10, Gautam Kumar. Side by side, had also exhibited viz. Exhibit-1 series, signature of respective seizure list witnesses over the seizure list, Exhibit-2, self-statement, Exhibit-3, chargesheet, Exhibit-4, relevant paragraph of the case diary divulging opinion of the ballistic expert. As stated above, the defence had not adduced ocular as well as documentary evidence.

7. As stated hereinabove, conviction happens to be under Section 399 of the I.P.C. as well as Section 402 of the I.P.C. For better appreciation of ingredients required for constituting the offence, it looks desirable to incorporate the same:-

Section 399 of the Indian Penal Code

“399. Making preparation to commit dacoity.—Whoever makes, any preparation for committing dacoity, shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.”

Section 402 of the Indian Penal Code



“402. Assembling for purpose of committing dacoity.—Whoever, at any time after the passing of this Act, shall be one of five or more persons assembled for the purpose of committing dacoity, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.”

8. That means to say, it happens to be incumbent upon the prosecution to substantiate the ingredients in order to constitute an offence punishable under Sections 399, 402 of the I.P.C. that assemblage of criminals more than five were for the purpose of preparation to commit dacoity.

9. In ***Chaturi Yadav and others vs. State of Bihar reported in (1979) 3 SCC 430***, it has been held:-

“4. The Courts below have drawn the inference that the appellants were guilty under both the offences merely from the fact that they had assembled at a lonely place at 1 A M. and could give no explanation for their presence at that odd hour of the night. Mr. Misra appearing for the appellant submitted that taking the prosecution case at its face value, there is no evidence to show that the appellants had assembled for the purpose of committing a dacoity or they had made any preparation for committing the same. We are of the opinion that the contention raised by the learned Counsel for the appellants is well founded and must prevail. The evidence led by the prosecution merely shows that eight persons were found in the school



premises. Some of them were armed with guns, some had cartridges and others ran away. The mere fact that these persons were found at 1 A.M. does not, by itself, prove the appellants had assembled for the purpose of committing dacoity or for making preparations to accomplish that object. The High Court itself, has in its judgment, observed that the school was quite close to the market, hence it is difficult to believe that the appellants would assemble at such a conspicuous place with the intention of committing a dacoity and would take such a grave risk. It is true that some of the appellants who were caught hold of, by the Head Constable are alleged to have made the statement before him that they were going to commit a dacoity but this statement being clearly inadmissible has to be excluded from consideration. In this view of the matter, there is no legal evidence to support the charge under Section 399 and 402 against the appellants. The possibility that the appellants may have collected for the purpose of murdering somebody or committing some other offence cannot be safely eliminated. In these circumstances, therefore, we are unable to sustain the judgment of the High Court.”

10. When the evidence of respective witnesses have been gone through, it is evident that they had merely asserted that after coming to know about presence of criminals in order to commit



an offence, raid was conducted and during course thereof, accused persons were apprehended. Informant (PW-9) was specifically cross-examined under Para-10 of his cross-examination wherein he had stated that in spite of knowing the name of informer, he is unable to disclose his name. Informer had not disclosed that accused persons assembled to prepare themselves to commit dacoity and that being so, in spite of examination of ten PWs at the end of the prosecution, the necessary ingredients attracting Section 399 of the I.P.C. as well as Section 402 of the I.P.C. is found lacking.

11. That being so, the judgment impugned is set aside. Appeal is allowed. Appellant is on bail, hence is discharged from its liability. The first and last page of the judgment be handed over to the learned Amicus Curiae for the needful.

(Aditya Kumar Trivedi, J)

Vikash/-

AFR/NAFR	A.F.R.
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