

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.316 of 2015

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

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Abhinav Kumar @ Vishal Jha @ Bishal Jha son of Sri Gunanand Jha resident of village Rambhadrapur, P.S. Bahadurpur, District - Darbhanga, at present residing at Mohalla New Khaja Sarai, P.S. Laheriasarai, District Darbhanga.

.... Petitioner/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Kaushalesh Choudhary

For the State : Ms. Anita Kumari, APP

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT

Date: 16-01-2018

Heard the learned counsel for the petitioner and the State.

2. The petitioner has been convicted by the learned Judicial Magistrate, 1st Class, Darbhanga under Section 394 of the Indian Penal Code and has been sentenced to undergo simple imprisonment for two years, to pay a fine of Rs. 1000/- and in default to payment of fine, to further suffer simple imprisonment for a period of one month, by judgment and order dated 21.09.2013 passed in T.R. No. 1915 of 2013, arising out of Laheriasarai (Benta) P.S. Case No. 505 of 2010.

3. Against the aforesaid judgment and order of conviction, the petitioner preferred an appeal before the learned



District & Sessions Judge, Darbhanga vide Cr. Appeal No. 72 of 2013, but the Appellate Court, vide judgment dated 06.01.2015 affirmed and upheld the judgment and order of conviction by the Trial Court.

4. Learned counsel for the petitioner, while assailing both the impugned judgments of the Courts below has stated that the conviction of the petitioner has been recorded without there being any evidence on record.

5. Rahul Kumar Singh, the informant, who has been examined as P.W. 4 has alleged that on 01.11.2010 at 9:45 P.M., while he was going to his house on his motorcycle, two criminals on a motorcycle intercepted him and asked him for the keys of the vehicle. He is alleged to have been assaulted by means of iron rod and a knife. Thereafter, his motorcycle was taken away by the miscreants. He was also divested of his mobile telephone and a bag. The miscreants were stated to be between 22-23 years of age. On the basis of the fardbeyan statement made by aforesaid Rahul Kumar Singh, Laheriasarai (Benta) P.S. Case No. 505 of 2010 was instituted for the offence under Section 394 of the Indian Penal Code against unknown.

6. The petitioner along with another was charge-sheeted and put on trial. During trial, nine witnesses, including the informant, were examined. As far as documentary



evidence is concerned, apart from the fardbeyan and the formal F.I.R, Test Identification Parade Charts were also produced and marked as Exhibits 3 and 4.

7. During the trial, P.W. 1 (Palat Yadav), P.W.2 (Ram Narayan Yadav), P.W. 5 (Manjan Yadav) and P.W.8(Raj Kumar Sah) did not support the prosecution version and were declared hostile.

8. Uday Kant Jha (P.W. 9) has proved the writing and signature of Dr. Ramji Thakur on the injury report (exhibit-5).

9. Rahul Kumar Singh, the informant, who has been examined as P.W. 4 though, admitted before the Trial Court that he was robbed by four miscreants in the night of 01.11.2010 and had to be admitted to D.M.C.H because of the injuries inflicted on his person by the miscreants, but he did not identify either the petitioner or another accused who was put on trial. He too was declared hostile by the prosecution.

10. On cross examination, P.W. 4 is said to have stated that he identified the petitioner and another in the Test Identification Parade, but he had never seen them before. In this context, it would be relevant to look into the deposition of P.Ws. 6 and 7 viz. Syed Kamrul Hassan Rizwi and Rakesh Kumar Roy, who had conducted the Test Identification Parade of the petitioner as



well as another co-accused.

11. P.W.6 has stated in his evidence that under the orders of the then Chief Judicial Magistrate, Darbhanga, he had conducted the Test Identification Parade of the petitioner in the District Jail, Darbhanga on 18.02.2011 and P.W. 4 had identified the petitioner as one of the miscreants who had taken away the motorcycle and a mobile from him with the help of his associates. Similar statement has been made by P.W. 7, who had conducted the Test Identification Parade of co-accused Vishal Kumar Jha @ Abhinav Kumar in Darbhanga Jail and P.W. 4 had identified the aforesaid accused person also as having participated in the occurrence.

12. The I.O. of this case has been examined as P.W. 3, who has stated that co-accused Pankaj Kumar Singh has many cases to his credit and bears a criminal record. He also stated before the Trial Court that all the witnesses who did not support the prosecution version during trial had in their statements before the police supported the factum of robbery.

13. Thus, for all practical purposes, it has been argued that there is no evidence on record to justify the conviction and sentence of the petitioner. It has also been submitted that it is really unfortunate that in a case of this kind, the petitioner has been made to undergo the sentence imposed upon him pursuant to the



judgment of conviction by the Trial Court.

14. From the records, it appears that the present case was one which was picked up for speedy trial where the allegation was of committing road robbery in the night. In this case, the medical Officer, who had examined the petitioner, was also not brought to the witness box to depose before the Trial Court. Both the Courts below have convicted and sentenced the petitioner on the strength of the deposition of P.Ws. 6 and 7, the Officers who had conducted the Test Identification Parade of the petitioner and another in Darbhanga Jail.

15. From the perusal of the judgments impugned, it appears that in a hurry to dispose off cases, the present case has been disposed off without there being any material against the petitioner. The evidences of P.Ws. 6 and 7 lose all significance in the event of the informant not supporting the prosecution version. He has admitted of his being robbed and injured in the occurrence, but on the point of identification, he has completely belied the prosecution version. When P.W. 4 made a statement before the Trial Court that he had identified the appellant for the first time in Test Identification Parade but his not identifying him as one of the miscreants in the dock, the Trial Court should have taken greater care in deciding the case against the petitioner. In the absence of the primary evidence of the identification by the petitioner by the



concerned injured in the dock left the Trial Court with no evidence at all. This is not the manner in which the evidence is required to be appreciated at the trial. The Appellate Court also seems to have taken a casual and cavalier approach in upholding and affirming the judgment and order of conviction.

16. A Court of law is not only to be guided by the desire of fast disposal of cases but should be concerned with meting out justice and justice can only be delivered if the evidence is appreciated in correct prospective and in accordance with law.

17. Finding no other way out and being constrained to uphold the aforesaid judgments of Courts below, I am of the view that in the interest of justice, both the judgments be set aside.

18. The impugned judgments are, therefore, set aside.

19. The revision petition is allowed.

(Ashutosh Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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