

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.347 of 2003

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

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Dinesh Mandal, son of Late Pairu Mandal, resident of village Amakhoriya, P.S.
Sajoll, District Bhagalpur

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant/s : Mr. Sanjeev Ranjan, Advocate

For the Respondent/s : Mr. Bipin Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 23-03-2018

Sole appellant Dinesh Mandal has been convicted under Section 412 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for five years and a fine of Rs.2000/- with default clause vide judgment dated 24.5.2003 and order dated 26.5.2003 passed by Sri Paras Nath Singh, the then Presiding Officer, Additional Court (Fast Track), Munger in Sessions Case No. 246 of 1988, T.R.No. 99 of 2002.

2. Prosecution case as appears from the fardbeyan of informant Ashok Kumar Mandal (PW 5), in short, is that on 11.12.1987 at about 8.30 P.M. he was sitting on cot in his house and his sister-in-law (Bhabhi) Ranju Devi (PW 3) was also sitting by his side and also his mother Sona Devi (PW 14) along with his sister Prabha Devi (PW 2) was sitting on another cot and his niece



(Bhagini) Archana Kumari (PW 12) was sitting in the adjacent room. The main entrance of the house was open at that time. All on a sudden three criminals entered in the informant's house and one of them dealt a fist blow on informant's mouth and demanded key of the box, another criminal pointed pistol on the neck of informant's niece Ranju Devi (PW 3). At that time electric light was cut off. However, a lamp was burning in the informant's room. One of the criminals started throwing household articles. In the meantime, informant's niece Archana Kumari (PW 12) arrived and told that four criminals have entered in the room and were taking out household articles. The articles looted away by the criminals from the informant's room, which belonged to the informant's sister Parbati Devi and mother Sona Devi have been mentioned in the FIR. Further prosecution case is that the criminals entered into the house of informant's uncle Mahendra Mandal but they could not take anything from his house. The informant and his niece Archana Kumari claims to identify the criminals from their physical features and wearing apparels and informant also claimed to identify the looted articles from his house. On the basis of above fardbeyan, Jamalpur P.S. Case No. 160 of 1987 was registered under Section 395 IPC against unknown persons.

3. It further appears that during course of investigation the S.I. (PW 16) inspected the place of occurrence and he seized a blue



coloured Muffler, suspected to have left by the criminals, from Rampur Bahiyar near Shiv Mandir on 12.12.1987, and seizure list was prepared and marked as Ext.9. Further on confidential information police raided the house of accused Sarwan Kumar Mandal and seized 13 suspected articles and seizure list was prepared and marked as Ext.10 in presence of witnesses on 16.12.1987. He also seized three suspected articles from the house of accused Binod Mandal and seizure list was prepared and marked as Ext.11. He also arrested accused Binod Mandal on 17.12.1987 and on interrogation he confessed his guilt. He raided the house of accused Dinesh Mandal and from where he seized 25 suspected articles from his house and seizure list was prepared and marked as Ext.12. Record further shows that T.I.P. was conducted for identification of the seized articles under supervision of Sri Madho Gupta, B.D.O. of Jamalpur and the identifying witnesses identified articles of serial no. 1 to 49 of the T.I.P. chart (Ext.14). T.I.P. was also held for identifying the suspected persons under supervision of Sri Harendra Prasad and Sri Rajendra Tiwari, Judicial Magistrates in jail and the identifying witnesses identified the suspects and T.I.P. charts were prepared and marked as Exts. 15 and 17. After completing investigation S.I. of Police (PW 16) submitted charge sheet against the accused persons under Sections 395 and 412 IPC. Cognizance of the offence was taken and case was



committed to the court of sessions, which ultimately came to the file of the learned Trial Judge for trial and disposal.

4. During trial the prosecution in order to substantiate its case has examined altogether 16 witnesses, they are PW 1 Sachidanand Mandal, PW 2 Parbha Devi (sister of informant), PW 3 Ranju Devi (Bhabhi of informant), PW 4 Bijay Kumar Mandal, PW 5 Ashok Kumar Mandal (informant), PW 6 Sudhir Mandal, PW 7 Satyendra Mandal, PW 8 Om Prakash Mandal, PW 9 Satish Kumar, PW 10 Sunil Kumar, PW 11 Jilebi Singh, PW 12 Archana Kumari (niece of informant), PW 13 Shyamdeo Bhagat, PW 14 Sona Devi (mother of informant), PW 15 Laxmi Prasad, who is pleader clerk and a formal witness who has proved formal FIR (Ext.7) and PW 16 Samse Alam, S.I. of Police (Investigating Officer).

5. Apart from that, the prosecution has brought on record the following documents: Ext.1- signature on fardbeyan, Ext. 1/1- signature of Sachidanand on fardbeyan, Ext.1/2- signature of informant Ashok Kumar Mandal on fardbeyan, Exts.2 to 2/4- signatures on seizure list, Ext.3- endorsement of Sani Kr. Singh on search list, Ext.4- signature of Gilebi Singh on seizure list, Ext.4/1- handwriting of Gilebi Singh on seizure list, Ext.5- carbon copy of seizure list, Ext.6- T.I. chart, Ext.7- signature on FIR, Ext.8- fardbeyan, Exts.9-13- seizure lists, Exts.14-15- T.I. chart, Ext.16-



signature on identification of suspect and Ext.17- T.I. chart.

6. Defence of the accused persons as per trend of cross examination and statement under Section 313 Cr.P.C. is of innocence and of false implication.

7. Learned trial court on conclusion of trial has convicted the appellant under Section 412 IPC. However, he has acquitted other accused persons, namely, Ashok Tanti, Rambilash Tanti, Ajay Tanti, Sarwan Kumar Mandal and Binod Kumar Mandal from the charges under Sections 395 and 412 IPC on the ground that they were co-villagers and not named in the FIR and also on the ground that articles seized from the house of Sarwan Kumar Mandal and Binod Kumar Mandal were of household articles of them or looted articles.

8. It appears from perusal of record that witnesses have supported the prosecution case so far factum of dacoity is concerned and from the prosecution evidence as well as seizure list it appears that articles were also seized from the houses of Sarwan Kumar Mandal and Binod Kumar Mandal and also from the house of Dinesh Mandal and seizure lists were also prepared. However, learned trial court, as discussed above, has acquitted the accused persons from the charge under Section 395 IPC as he was villager of the informant and in spite of that he was not named in the FIR and he has also acquitted accused Sarwan Kumar Mandal and Binod Kumar Mandal on the



ground that looted articles are household articles, as such, Test Identification has no value. However, learned trial court has convicted the appellant as seizure list (Ext.13) (wrongly mentioned as Ext.12 in the judgment) shows that gold neckless, gold chain-one pair, gold Jhumka-one pair, Mantika-one, golden Nathiya-one, golden Mangal Sutra-one, Silver locket-one, silver Piyal-one pair, Piyal one pair, silver wring-five and Rs.1200/- in cash kept in a box was seized from the house of appellant Dinesh Mandal and prosecution witnesses, i.e., PWs. 1, 2, 3, 4, 5 and 14 have identified them in the T.I.P. T.I.P chart is marked as Ext.6, which shows that those articles were identified by the aforesaid witnesses. However, it appears that the Judicial Magistrate, who has conducted TIP has not been examined by the prosecution in this case though TIP chart has been brought on record as Ext.6.

9. Contention of learned counsel for the appellant is that in this case though articles have been identified in TIP by the prosecution witnesses and TIP chart has also been brought on record but there is no evidence available on record to show that appellant has knowledge that those articles were stolen articles of this case and as such even if it is believed that those articles were recovered from the house of appellant, conviction cannot be made under Section 412 IPC and in support of his contention he has relied upon a decision of



Hon'ble Apex Court in the case of **K.Venkateshwara Rao alias Venkatal alias I. Rao vs. State represented by Inspector General of Police, A.P. : (2002) 6 SCC 247** and he has drawn my attention towards paragraphs-4 & 5 of the judgment in which Hon'ble Apex Court in a case where accused was charged under Sections 396 and 412 IPC and considering the facts and circumstances has held as follows :

“4. To appreciate the contentions of the rival parties, it is necessary to note the fact that while the Sessions Court found the appellant and the others guilty of offence under Section 302, 396 and 412 IPC, the High Court on reappraisal of the evidence came to the conclusion that the prosecution has failed to establish the charge under Section 396 against the appellant and the others. While doing so the High Court held :

“By the above discussion it is evident that the prosecution want to rely upon the circumstantial evidence which, according to our opinion, is not properly collected..... We acquit A-3 to A-6 and A-9 of the charge punishable under Sections 302 and 396 IPC.”

Thus, it is seen that the High Court did not accept the prosecution case in regard to dacoity or the involvement of the appellant in the said dacoity. Therefore, it becomes obligatory on the part of the prosecution to establish that the property in question was involved in a dacoity and that the appellant was in possession of the same knowing that the said property was the subject-matter of a dacoity or at least had reasonable ground for believing that the said property had been involved in a dacoity. When the Court held that the appellant was not guilty of the offence of dacoity, it should be presumed that the appellant had no knowledge of the dacoity during which offence the documents seized from him were allegedly



stolen. In the instant case what the prosecution has established is that the appellant was in possession of Exts. P-36 to P-40 which the prosecution alleges, belongs to a lorry involved in a dacoity but that part of the knowledge of dacoity cannot be presumed by the mere possession of these documents unless the prosecution adduced some evidence to show that the appellant had knowledge of such dacoity. For the purpose of proving that the appellant had knowledge of the dacoity, the learned counsel for the respondent relies upon an alleged statement given by the appellant to the police at the time of seizure of Exts. P-36 to P-40. That statement, in our opinion, can be used by the prosecution for establishing that these documents were covered on an information given by the appellant which would be admissible under Section 27 of the Evidence Act. Beyond that, anything stated which has no direct bearing on the recovery itself cannot be admissible in evidence to bind the appellant. At this stage, it should be stated that the learned counsel for the appellant has rightly pointed out to us that the case of the prosecution that the appellant has made any confession as to the dacoity cannot be believed in view of the evidence of PW 24 who in his evidence before the Supreme Court had stated :

“The CI questioned about the whereabouts of the lorry AHJ 748. Venkati stated that one Satyanarayana and Goldman took away the lorry to Kakinada and stationed at RTO Office, Kakinada. Except the above words he did not disclose anything to the CI of Police.”

5. The above extract of the evidence of PW 24 clearly shows that the appellant had in that statement of his, not made any admission that the documents which were taken from his possession belonged to the lorry in question or that he had the knowledge that the said lorry was involved in any dacoity and that he had taken the said documents knowing that the documents involved pertained to a vehicle which was involved in a



dacoity. Therefore, we are of the opinion that the prosecution in this case having failed to establish the charge of dacoity against the appellant and assuming that the documents Exts. P-36 to P-40 were recovered lawfully from the appellant, still has not established the fact that the appellant had received these documents knowing that the same or having believed that these documents were involved in a dacoity. Since the onus of proving this knowledge lay on the prosecution and the prosecution having failed to discharge this onus on the material on record, we are not satisfied that the appellant could be held guilty of the offence under Section 412 IPC, more so when he has specifically denied the recovery.”

10. On the other hand, learned counsel for the State has defended the impugned judgment on the ground that conviction of the appellant under Section 412 IPC is just and proper as he is liable for dishonestly receiving or retaining articles knowing or having reason to believe that the possession of the same have been acquired by commission of dacoity and the same does not require any interference by this Court.

11. On perusal of the aforesaid judgment of the Hon’ble Supreme Court, it appears that that case is slightly distinguishable with the facts of the present case as in that case appellant was charged under Sections 396 and 412 IPC and he was acquitted from the charge under Section 396 IPC and as such in the facts and circumstances the Hon’ble Apex Court has held as stated above. In the present case prosecution has not brought on record any evidence to show that



accused appellant has knowledge that these articles were looted articles in the dacoity but he has not given any explanation for recovery of those articles in his statement under Section 313 Cr.P.C. and nothing has been brought on record to show that the seized articles belonged to him or explained about his possession and in view of that though conviction cannot be held under Section 412 IPC. However, Section 411 IPC provides as follows :

“S 411. Dishonestly receiving stolen property.- Whoever dishonestly receives or retains any stolen property, knowing or having reason to believe the same to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.”

12. In a similar type of case Hon’ble Apex Court in the case of **Achyut Das and another vs. State of Assam : 1994 CRI.L.J. 1119**, in paragraph-3 has held as follows :

“3. The only question that falls for consideration is whether an offence punishable under Section 412 is squarely made out? The dacoity which took place on the intervening night of 29th and 30th July, 1979 is not in doubt. The stolen articles were recovered from the possession of the appellants during the investigation. Besides the evidence of the official witnesses there is evidence of P.W. 8, who stated that he purchased these articles from the appellants. The appellants could not give any explanation as to how they came into possession of the stolen property. But the



question is whether it can be said that the appellants knew that those articles were stolen in dacoity? The prosecution has to prove such knowledge since that is an essential ingredient of Section 412 as compared to the ingredient of S. 411. In the instant case there is no material to come to the conclusion that the appellant knew or had reason to believe that the articles were stolen in the course of the dacoity. Therefore the only presumption that can be drawn against them was that they knew that the articles were stolen in which case the offence made out would be one punishable under S. 411, I.P.C. accordingly the conviction of the appellants under S. 412, I.P.C. and sentence of 1-1/2 years R.I. thereunder are set aside. Instead they are convicted under S. 411, I.P.C. and sentenced to undergo three months' R.I. The sentence of fine with default clause, is however, confirmed. Accordingly the appeal is partly allowed."

13. Considering the aforesaid facts and circumstances, learned trial court has not considered the aforesaid aspect of the matter and also not considered the fact that there is no evidence that those stolen articles were looted articles in dacoity and on considering the decision cited above, the appellant may conveniently be held guilty under Section 411 IPC as Section 411 is minor Section to S. 412. Hence, conviction of appellant under Section 412 IPC is modified to a conviction under Section 411 IPC.

14. Appellant has been sentenced to undergo R.I. for five years with a fine of Rs.2000/- with default clause. Submission of learned counsel for the appellant is that he has already remained in



custody for three years and occurrence is of the year 1987, as such, sentence may be reduced to the period already undergone by him in custody.

15. Considering the submission of learned counsel for the appellant and in view of Section 411 IPC in which maximum sentence prescribed is three years, the period of sentence of the appellant is reduced to the period already undergone by him in custody.

16. With the above modification in the judgment of conviction and order of sentence, this appeal is disposed of.

(Vinod Kumar Sinha, J)

spa/-

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