

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.200 of 2003

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

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Dineshwar Dubey S/O Late Chadnra Shekhar Dubey R/O Vilalge Mamarkha, P.S.
Malahi, District Motihari.

.... Appellant

Versus

State of Bihar

.... Respondent

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Appearance :

For the Appellant : Mr. Ambuj Nayan Chaubey, Adv.
Mr. Vikas Kumar, Adv.
Mr. Amit Kumar, Adv.

For the Respondent : Mr. Binod Bihari Singh, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL JUDGMENT

Date: 09-02-2018

The sole appellant stands convicted under Section 412 of the Indian penal Code and sentenced to undergo R.I. for seven years, however, he has been acquitted from the charges levelled under Section 395 of the Indian Penal Code, vide judgment and order dated 24.4.2003 passed by Sri Bipin Dutta Pathak, XIth Addl. Sessions Judge, Saran at Chapra in Sessions Trial No.124 of 2002.

2. The prosecution case, as per the written application, given by the informant Dr. Ashok Kumar Singh to the Officer Incharge of Danapur Police Station that on 22.4.2000 while he was going along with his uncle, he was intercepted by the accused person and looted cash and articles and also looted away his Sumo Vehicle. On that written application, Daudpur P.S.Case No.51 of 2000 was



registered. It appears that during the investigation, the vehicle was recovered in connection with some other cases, which is Malahi P.S.Case No.70 of 2000 from the *darwaza* of the appellant. Post investigation, the charge-sheet has been submitted against the appellant and the cognizance of the offence was taken. It further appears that as the case is triable by the court of Sessions, the same has been committed to the court of Sessions, which ultimately came to the file of Sri Bipin Dutta Pathak, XIth Addl. Sessions Judge, Saran at Chapra for trial and disposal.

3. The charges have been framed under Sections 395 and 412 of the IPC. In course of the trial, nine witnesses have been examined and they are – P.W.1 Dr. Ashok Kumar Singh, P.W.2 Lallan Dubey, P.W.3 Surat Ram, P.W.4 Vijay Kumar Singh, P.W.5 Ram Narayan Singh, P.W.6 Sri Rameshwar Singh, P.W.7 Prabhat Bhushan Srivastava, P.W.8 Ramkant Upadhyaya and P.W.9 Shyam Kishore Prasad, out of which Dr. Ashok Kumar Singh (P.W.1) is the informant of the case and P.W.9 is the informant of Malahi P.S.Case No.70 of 2000 and P.W.6 and P.W.7 are First and Second I.Os. respectively.

4. On perusal of the evidence, it appears that so far P.Ws. 1 to 5 are concerned, they appear to be witness on the first part of the occurrence with regard to looting away of the Tata Sumo Vehicle,



however, P.W.1 had identified the vehicle after its recovery in Malahi P.S.Case no.70 of 2000. P.Ws.6 and 7 are the I.Os. of the present case and they have also stated about recovery of Sumo Vehicle in Malahi P.S.Case no.70 of 2000, however, it appears from their evidence that neither the appellant was put on TIP nor the article was put on TIP, however, the evidence of P.W.1, who is informant of Malahi P.S.Case no.70 of 2000 is concerned, it appears that the documents in the name of the Dr. Ashok Kumar Singh were recovered from the dashboard of the vehicle.

5. The defence of the accused person/appellant is simply of false implication and of innocence and no oral or documentary evidence has been adduced in this case.

6. The learned trial court after conclusion of the trial has though acquitted the appellant from the charges under Section 395 of the IPC, however convicted the appellant under Section 412 of the IPC on the ground that recovery was made from *Darwaza* and further on the ground that he had knowledge about the vehicle that it is stolen property of this case.

7. Contention of the learned counsel for the appellant is in two folds- First on the ground that the trial court has disbelieved the story of the defence and disbelieving the case under Section 395 of the IPC ought not to have convicted the appellant under Section 412



of the IPC. Further contention of the learned counsel for the appellant is that when there is nothing available on the record to show that the petitioner had knowledge that the articles were theft articles. Secondly it has been submitted by the learned counsel for the appellant that at best it will come under the purview of Section 411 of the IPC. In support of the aforesaid contention, the learned counsel for the appellant has cited decisions of the Hon'ble Apex Court reported in the case of *K. Venkateshwara Rao – Vrs. State of represented by Inspector of Police, A.P.*, reported in (2002) 6 SCC 247 in support of his first contention and decision of the Hon'ble Apex Court in the case of *Achyut Das and another Vrs. State of Assam* reported in (1994) 1 SCC 387 with regard to his second contention. On the basis of above submission, learned counsel for the appellant argued that prosecution could not prove the offence under Section 412 of the IPC beyond reasonable doubt.

8. On the other hand, the learned counsel for the State has defended the judgment on the ground that there is recovery from the *Darwaza* of the appellant and evidence of P.W.9 who is informant of Malahi P.S. Case no.70 of 2000 shows that in the dashboard of the vehicle, documents of the vehicle was found and that clearly shows that the vehicle is in the name of Dr. Ashok Kumar Singh and as such it can not be said that he was not knowing that it is stolen article and



further the appellant has not given any explanation about the recovery, as such conviction of the appellant under Section 412 of the IPC is just and proper and it does not require any interference by this Court.

9. Considering the aforesaid facts and circumstances, it appears that there are cogent evidence that the vehicle was intercepted by the police in Malahi P.S.Case no.70 of 2000 and P.W.9, who is the informant of that case has stated that he had seen the appellant on that vehicle and later on the vehicle was recovered from *darwaza* of the appellant and it has been identified by P.W.1 also.

10. In view of submission of the learned counsel for the appellant, question arises that once the learned trial court has acquitted the appellant under Section 395 of IPC as to whether the appellant can be convicted under Section 412 of the IPC on the same materials available on the record and in support of his contention, the learned counsel for the appellant has cited decision of the Hon'ble Apex Court in the case of K. Venkateshwara Rao – Vrs. State of represented by Inspector of Police, A.P. (supra) and that clearly shows that the Hon'ble Apex Court at para 4 of the judgment has held as follows :-

“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



persecution 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.”

11. In the case at hand it appears that the appellant was not named in the FIR nor any witness has named this appellant however, he was arrested in connection with Malahi P.S. Case no.70 of 2000 and he was seen in the vehicle and the vehicle was seized from the door of the appellant and the document found in the dashboard also shows that the vehicle belongs to the appellant Dr. Ashok Kumar Singh, who is informant in this case, however, it appears from perusal of the record that apart from that there is nothing available on the record to show that it is a stolen property in dacoity and the appellant has knowledge that it is stolen property in the earlier dacoity, for which the present case has been filed.

12. However, the above evidence shows that the appellant has knowledge that vehicle does not belong to him and it is in the name of Dr. Ashok Kumar Singh and as such it led to an inference that he was aware of the fact that it is stolen property. The Hon'ble Apex Court in the case of Achyut Das and another Vrs. State of Assam (supra), in the above facts and circumstances, has held that –

“....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 Section 411. In the instant case there is no materials to come to the conclusion that the appellants 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 Section 411 IPC.”

13. In the case at hands, as the appellant was had knowledge that the article does not belong to him rather it is stolen article as such the presumption can be drawn against them that he had knowledge that the articles were stolen.

14. In the present case, the appellant has been convicted under Section 412 of the IPC, however, in view of the facts and circumstances as discussed above, the appellant can be found guilty under Section 411 of the IPC. The learned trial court has not considered this aspect of the matter. Accordingly, conviction of the appellant under Section 412 of the IPC is modified to conviction under Section 411 of the IPC. The appellant was sentenced to undergo R.I. for seven years and under Section 411 of the IPC, maximum sentence is of three years. It is submitted by the learned counsel for the appellant that the appellant has remained in custody for three years in this case during he trial and appeal, as such



sentence is also modified to the extent that the period he has already undergone in custody.

15. With the aforesaid modification in conviction and sentence, this appeal is dismissed.

(Vinod Kumar Sinha, J)

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