

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.166 of 2003

=====

Mohammad Yusuf @ Md. Yusuf Mian, Son of Late Ramjan Miylan, Resident of
Village – Simadwara Nemuari, P.S. – Patepur, Dist – Vaishali.

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Baban Roy, Amicus Curiae

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

=====

CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 22-02-2018

As nobody has appeared on behalf of the appellants and the case is of the year 2003, I deem it appropriate to appoint Mr. Baban Roy as an *Amicus Curiae* to assist the court.

2. Challenge in this appeal is of judgment of conviction and order of sentence dated 14.02.2003, passed by Shri A.N.K.N. Sinha, the then Presiding Officer, Additional Court No. 1, (Fast Track Court), Vaishali at Hajipur, in Sessions Trial No. 198/1997, by which the appellant Mohammad Yusuf @ Md. Yusuf Mian was convicted under Section 397 of the IPC and was sentenced to undergo R.I. for 07 years and the period already undergone by him in judicial custody was directed to be set off.

3. Prosecution case as per the fardbeyan of informant Md.Nayeem (P.W. 5) in short is that on 14/15th of May 1996, the



informant after attending a marriage ceremony returned to his home and was sitting in a cot and was engaged in a talk with his wife, the informant noticed that about 10 to 15 persons entered inside his house and surrounded him and started assaulting him and his wife and his son. It is further alleged that one of the accused persons exploded bombs, which caused some injury to the informant. It is also alleged that the informant identified the appellant and accused persons also looted away a cash of Rs. 35,000/-. According to prosecution, the reason behind the occurrence is that on 14.05.1996, Tractor driver Bimphal Singh along with 6 to 7 labourers had cut the earth from the informant's land and when the informant protested, he was threatened that they will teach him a lesson. It further appears that during investigation some stolen articles were recovered from possession of accused Bhushan Sahni and Rajgir Sahni. Further the accused Nanhaki Rai was identified in T.I.P. by one Md. Fakhruddin while Bhushan Sahni was identified in the T.I.P. by the informant – Md. Nayeem.

4. Police after investigation submitted charge-sheet against the appellant and other accused persons. Cognizance of the offence was taken and the case was committed to the court of sessions, which ultimately came to the file of Sri Shri A.N.K.N. Sinha, the then Presiding Officer, Additional Court No. 1, (Fast Track Court),



Vaishali at Hajipur, for Trial and disposal.

5. Charges were framed against the appellant under Section 397 of the IPC and charges against other accused persons under Section 412 of the IPC .

6. In order to prove its case, prosecution has examined altogether twelve witnesses, they are; P.W. 1 - Md. Naushad, P.W. 2 – Rehana Khatoon, P.W. 3 – Jaitun Nisha (wife of informant), P.W. 4 – Md. Javed Alam, P.W. 5 – Md.Nayeem (informant), P.W. 6- Md.Mahfooj, a witness of the seizure list, P.W. 7 – Ajay Kumar Paswan, seizure list witness, P.W. 8 – Ram Naresh Singh, seizure list witness, P.W. 9 – Md. Nayan, P.W. 10 - Md. Soyeab, P.W. 11- Punam Prakash and P.W. 12 – Raghupati Sahay, (I.O.).

7. From the side of defence also three witnesses have been examined and they are; D.W. 1 – Kishore Singh, D.W. 2 – Nagendra Sahni and D.W. 3 – Paltan Sahni.

8. Apart from the above, following documents have been brought on record and marked as Ext. 1 – Signature of Md.Nayeem on statement under Section 164 Cr.P.C., Ext. 2 – Signature of Md.Nayeem on protest petition and Ext. 3 – Signature of Md.Nayeem on fardbeyan. Further Ext. 3/1 to 3/2 – Signature of witnesses in the seizure list, Ext. 4 – Fardbeyan, Ext. 5, 6 and 6/1 – Seizure list, Ext. 7 – T.I.P. Chart (S. N. Thakur) and Ext 7/1 T.I.P. Chart (Prabhakar



Mishra)

9. Learned Trial Court after considering the evidence available on record, convicted the appellant under Section 397 of the IPC and sentenced him in the manner as stated above. By the said judgment the Trial Court acquitted all other accused persons from the charges under Section 397 and 412 of the IPC.

10. Aggrieved by the said judgment, the appellant preferred the instant appeal.

11. Contention of learned *Amicus Curiae* is that conviction of the appellant under Section 397 of the IPC is only based on the sole testimony of the informant and no other witness have identified the appellant. Further contention of learned *Amicus Curiae* is the for conviction under Section 397 of the IPC, prosecution has to prove commission of robbery and dacoity and also at the time of committing robbery or dacoity, the accused used any deadly weapon, or causes grievous hurt or attemptd to cause death or grievous hurt to any person but in the present case, there absolutely nothing available on record that the informant or his family member have received any injury except the ocular evidence and further in this case doctor has also not been examined and the Trial Court without considering all these facts, has convicted the appellant under Section 397 of the IPC, which is out and out perverse and not sustainable in the eye of law.



12. On the other hand, learned counsel for the respondent – State defended the judgment of trial court and submitted that evidence of witnesses is consistent on the point of dacoity and assault as well as on the point of hurling bombs and appellant was also identified by the informant at the time of occurrence. Evidence of other witnesses also corroborate the evidence of informant. Hence conviction of the appellant under Section 397 of the IPC is just and proper and does not require any interference.

13. On the background of rival contention, from perusal of the evidence available on record, it appears that so far factum of dacoity is concerned, almost all the witnesses have supported the occurrence and there is nothing to doubt the credibility of evidence of witnesses.

14. P.W. 5 is the informant in this case and he claimed in his evidence to have identified the appellant Mohammad Yusuf @ Md. Yusuf Mian as the person, who ordered for exploding the bombs but it appears that he named other accused persons also, which he had not named in the F.I.R. This witness has admitted in his cross-examination in para -6 that appellant Mohammad Yusuf @ Md. Yusuf Mian is his neighbour and he has also stated that he identified the appellant and others in the light of lantern. Several suggestions were given to this witness in cross-examination regarding previous enmity with the appellant, however, he denied all those suggestions.



15. P.W. 1 also claimed to have identified the appellant Mohammad Yusuf @ Md. Yusuf Mian but he has admitted that appellant Mohammad Yusuf @ Md. Yusuf Mian, is his co-villager. P.W. 2 has not named the appellant Mohammad Yusuf @ Md. Yusuf Mian, who ordered for exploding the bomb rather he disclosed that appellant Mohammad Yusuf @ Md. Yusuf Mian has also exploded bomb, which is not the prosecution story. P.W. 3 is the wife of P.W. 5 and also claimed to have identified appellant Mohammad Yusuf @ Md. Yusuf Mian. However, there is contradiction in the evidence of this witness as she in her previous statement before the police has not stated that appellant Mohammad Yusuf @ Md. Yusuf Mian asked to explode the bomb and other accused exploded the bomb. She had also admitted that she knows the appellant Mohammad Yusuf @ Md. Yusuf Mian from before. P.W. 4 has also not named the appellant rather he has identified him in T.I.P. P.W. 6 and 7 are formal witnesses , who proved the seizure list. Similarly P.W. 8 is also a witness of seizure list but he has stated in his evidence that no search was made in his presence. P.W. 9 Md. Soyeb has also claimed to have identified appellant Mohammad Yusuf @ Md. Yusuf Mian and also claimed that the appellant Mohammad Yusuf @ Md. Yusuf Mian had also exploded the bomb, however, it is not the prosecution story and even informant has not stated so in his evidence. P.W. 10 has not



named the appellant. P.W. 11 is a formal witness, who has proved some documents. P.W. 12 is the I.O. of this case and he has stated in his evidence that on information he went to the place of occurrence and recorded the statements and also prepared the seizure list and, thereafter, he handed over the charge of investigation to some other officer. P.W. 13 and P.W. 14 are the Judicial Magistrates, who had conducted the T.I.P.

16. On consideration of the evidence of witnesses on whole, it appears that appellant Mohammad Yusuf @ Md. Yusuf Mian has been identified by the informant and other witnesses and no doubt one of the witnesses has stated that he had also exploded the bomb but that is not the prosecution story and informant has also not stated so in his evidence. The trial court has convicted the appellant Mohammad Yusuf @ Md. Yusuf Mian under Section 397 of the IPC, however, so far Section 397 is concerned, to my opinion, the same is limited to the offender, who actually caused grievous hurt and used deadly weapon in commission of the offence, which is a settled principle of law. Further the use of deadly weapon by another offender at the time of committing robbery, cannot attract Section 397 IPC for the imposition of minimum punishment on appellant, who had not used any deadly weapon and in this case, it is evident that the appellant has not used any deadly weapon. Considering the same, to my opinion the



appellant could have more appropriately be convicted under Section 395 of the IPC, which is a minor offence under Section 397 of the IPC.

14. Accordingly, the conviction of appellant under Section 397 of the IPC is altered to conviction under Section 395 of the IPC. Further it appears that the appellant was sentenced to undergo R.I. for 07 years under Section 397 of the IPC and learned *Amicus Curiae* has pointed out that he has already remained in judicial custody for six years and the occurrence is of the year 1996 and 22 long years have passed since then, as such, no purpose will be serve to sent the appellant behind the bars to serve the remaining sentence. Hence, the sentence is reduced to the period already undergone by him in judicial custody.

17. With the aforesaid modification in conviction and sentence, this appeal is disposed of.

(Vinod Kumar Sinha, J)

sunil/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

