

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.225 of 2003

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

1. Sharif Lal Rai, son of Janak Rai
2. Asharfi Sahni, son of Nagendra Sahani, both residents of village Mushari, P.S. Mushari, District Muzaffarpur

.... Appellants

Versus

The State of Bihar

.... Respondent

with

Criminal Appeal (SJ) No. 239 of 2003

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

Ram Pravesh Mahto @ Nand Mahto, son of Sundar Mahto, resident of village Mushri, P.S. Mushari, District Muzaffarpur

.... Appellant

Versus

The State of Bihar

.... Respondent

with

Criminal Appeal (SJ) No. 278 of 2003

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

1. Arbind Paswan, son of Ram Chandra Paswan, resident of village Godriya, P.S. Bochaha, District Muzaffarpur
2. Shambhu Sah, son of Keshav Lal Sah, resident of village Mushari, P.S. Mushari, District Muzaffarpur

.... Appellants

Versus

The State of Bihar

.... Respondent

Appearance :

(In CR. APP (SJ) No.225 & 239 of 2003)

For the Appellant/s : Mr. Vindhya Keshari Kumar, Sr. Advocate
with Mr. Rana Sanjay Kr Singh, Advocate

For the respondent : Mr. Binod Bihari Singh, APP
(In CR. APP (SJ) No.278 of 2003)

For the Appellant/s : Mr.Ravi Shankar Pathak (amicus curiae)

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



CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL JUDGMENT
Date: 26-04-2018

Appellants in all the three appeals have been convicted under Section 395 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for seven years vide common judgment dated 7.4.2003 and order dated 16.4.2003 passed by Sri R.K.Sanyal, the then Additional Sessions Judge-IV, Muzaffarpur in Sessions Trial No. 190 of 1997 and acquitted them from the charge under Section 397 IPC.

2. Prosecution case which appears from the fardbeyan of one Bijay Singh @ Udai Singh (PW 5), in short, is that on 7.10.1996 at about 1.05 A.M. in the night while he was sleeping inside the house large number of miscreants variously armed entered inside the house and exploded bombs and committed dacoity for half an hour and thereafter they entered the house of neighbour of informant, namely, Yogendra Singh, Ramagya Singh and Harendra Singh and committed dacoity in their house also and it is stated that articles worth Rs.75,000/- from the house of informant and articles worth Rs.1,25,000/- were looted by the dacoits. It further appears from the record that later on on 18.10.1996 a dacoity was again committed in the house of Harendra Singh and Yogendra Singh and on that very



day when the dacoits were fleeing after committing dacoity, they were caught on the other side of the 'dhab' and in total six dacoits were nabbed and from them money, revolver and other articles were recovered and they were identified and for that Bochaha P.S.Case No. 105 of 1996 was registered.

3. On the basis of aforesaid fardbeyan Bochaha P.S.Case No. 100 of 1996 was registered under Sections 395, 397 of the IPC and Sections 3/4 of Explosive Substance Act, cognizance was taken and as the case was triable by court of sessions the same has been committed to the court of sessions, which ultimately came to the file of the learned Trial Judge for trial and disposal.

4. During course of trial altogether eight witnesses have been examined on behalf of prosecution, they are PW 1 Murali Singh, PW 2 Santosh Kumar Singh, PW 3 Manoranjan Kumar Singh, PW 4 Shrinath Singh, PW 5 Vijay Prasad Singh @ Udai Prasad Singh, the informant, PW 6 Dukhan Sahani, PW 7 Ram Krishna Singh and PW 8 Dularchandra Ram.

5. In the defence there was total denial regarding the allegations and during statement recorded under Section 313 Cr.P.C. and they have claimed themselves innocent and false implication.

6. No body appears on behalf of the appellants of



Cr.Appeal(SJ) No. 278 of 2003, as such, Sri Ravi Shankar Pathak, Advocate has been appointed as amicus curiae to assist this Court.

7. Learned Sr.Counsel appearing for the appellants of Cr.Appeal (SJ) No. 225 and 239, all of 2003 has assailed the impugned judgment on the ground that in this case there is absolutely nothing against the appellants as they were not identified during dacoity nor named in the FIR nor put on TIP nor any incriminating article has been recovered and they have been convicted only on the basis of the fact that while committing dacoity later on on 16.10.1996 they were arrested and they disclosed before police and some villagers that they had also participated in the occurrence. Further submission is that conviction of the appellant on the basis of the statement made before police and that too in another case cannot be sustained in the eye of law, specially when confessional statement has not been brought on record, as such conviction of the appellants is perverse and bad in law and not sustainable in the eye of law.

8. On the other hand, learned counsel for the State has defended the finding of guilt on the ground that accused persons were arrested and they have disclosed about their participation in the crime before police and also before villagers and villagers have identified them which is evident from evidence of PWs 2 and 4.



9. Considering the submission of rival parties it appears that the case is based on a very short point as to whether the statement of the accused persons before police in a separate case can be considered as evidence in the present case specially when confessional statement has not been brought on record and further point involved is as to whether statement of the witnesses that the appellants have stated before them that they have participated in that occurrence is sufficient for holding them guilty under Section 395 IPC in the present case. It further appears that so far factum of dacoity committed on 6.10.1996 is concerned, the evidence of witnesses is consistent and it further appears that the witnesses further disclosed that another dacoity was committed on 18.10.1996 wherein dacoits were chased by police and villagers and six accused persons were arrested, namely, Shambhu Sah, Shariflal Rai, Ram Pravesh Mahto, Binay Kumar Sinha, Arvind Paswan and Dinesh Rai and it is their case that six accused persons have disclosed about their involvement in the dacoity on 6.10.1996. The evidence of I.O. (PW 8) had disclosed that the confessional statement of the accused was recorded in the case with respect to the occurrence of 18.10.1996 and the same has not been recorded in the present case, which is evident from paragraph-8 of his cross examination. It further appears from his evidence that neither TIP was



held nor any request has been made for the same. Apart from that, so far evidence of other witnesses is concerned, PW 1 has been declared hostile by the prosecution. PW 2 in his evidence disclosed that six accused, including appellants were chased on the occurrence of 18.10.1996 and dacoits have disclosed that they have participated in the occurrence of 6.10.1996 and also disclosed that they have stolen ornaments and other articles of Krishna Mohan Sonar and he has identified those six dacoits who have been arrested in the subsequent case but the statement does not disclose that those accused were seen in committing dacoity with respect to occurrence of 6.10.1996. Evidence of PW 3 also disclosed that the same accused persons, including the appellants were arrested on chase with respect to the occurrence of 18.10.1996 but he has stated that while dacoity was committed in his house dacoits have concealed their identification by clothes. PW 4 has also disclosed in his evidence that all the six accused persons have participated in the dacoity committed in his house but nothing was recovered and evidence also shows that dacoits were arrested in subsequent occurrence and not in the present case. His evidence also disclosed that he has stated before police that he had identified them and they had participated in the dacoity committed in his house. His evidence further disclosed that he has not



stated in what manner they have participated in dacoity in his house. PW 5 has stated that he has not identified any of the dacoits in paragraph-2 of his evidence and in subsequent dacoity six accused persons were arrested. PW 6 is a formal witness and PW 7 is one of the I.Os. and his evidence is not relevant for the just decision of this case and PW 8 is second I.O. so far evidence disclosed earlier. Only evidence of accused persons disclosed that they have participated in the occurrence of 6.10.1996 also. Statements of the accused persons have not been recorded in connection with the present case, rather has been recorded in the occurrence of 18.10.1996 and in such view of the matter the conviction of the appellants on the basis of evidence recorded in other case does not inspire confidence and does not appear to be sustainable in the eye of law. It further appears that the appellants have been made accused and convicted on the basis of their disclosure made before police in a subsequent dacoity but no such question has been asked to the appellants in their statement under Section 313 Cr.P.C. and simple questions were asked that they have committed dacoity in the house of Vinay Singh, Ramashray Singh and Devendra Pd. Singh and no such question has been asked and they have been arrested on 18.10.1996. In such view of the matter also, the conviction of the appellants does not appear to be sustainable in the



eye of law. Learned trial court has convicted the appellants only on the basis of the evidence of PWs 2 and 4 so far identification is concerned and failed to consider that the statement before police has not been brought on record during trial and those witnesses have stated nothing as to what manner appellants have participated in the dacoity and further failed to consider that there is no proper compliance of Section 313 Cr.P.C.

10. Considering the aforesaid infirmities and inconsistencies, the conviction of the appellants does not appear to be sustainable. All these appeals are allowed. The impugned judgment and order are set aside. As the appellants are on bail, they are directed to be discharged from the liabilities of their bail bonds.

(Vinod Kumar Sinha, J)

spa/-

AFR/NAFR	
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