

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.518 of 2003

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

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1. Gajadhar Rajbansi, son of Basho Rajbansi
2. Bijay Rajbansi, son of Dasrath Rajbansi
3. Jattan @ Jatto Rajbansi @ Jago Rajbansi, all residents of Harijan Tola, Gopal
Nagar, P.S. Nardiganj, District Nawada

.... Appellants

Versus

The State of Bihar

.... Respondent

with

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Criminal Appeal (SJ) No. 70 of 2004

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

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1. Domi Rajbanshi, son of Aado Rajbanshi
2. Binda Rajbanshi, son of Mudhan Rajbanshi, both residents of Harijan Tola,
Gopal Nagar, P.S. Nardiganj, District Nawada

.... Appellants

Versus

The State of Bihar

.... Respondent

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Appearance :

(In both the appeals)

For the Appellant/s : Mr. Devendra Prasad with Smt. Uma
Kumari, Advocates

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

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 04-09-2018

Since both the appeals arise out of the same impugned judgment and order, they have been taken up together and are being disposed of by this common judgment.

2. Appellants in both the appeals have been convicted under Section 395 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for five years vide judgment and order dated 17.11.2003 passed by Sri Kamla Prasad Sinha, the then Presiding Officer, Fast Track Court, Nawada in Sessions Trial No.354 of



2002/458 of 1989.

3. Prosecution case, in short, is that while the informant Ramdeo Singh (not examined) was sleeping along with his elder brother Ramnandan Singh (PW 2) at his darwaja, at about 12 in the night in between 7th and 8th March, 1989 10-12 dacoits attacked them and they exploded bomb, causing burn injuries to the informant and looted articles. It is also stated that he tried to apprehend the dacoits but it was dark night, as such they escaped with booty towards north-west.

4. On the basis of aforesaid fardbeyan, Nardiganj P.S. Case No. 14 of 1989 was registered against unknown and later on names of the appellants transpired during investigation of this case. After investigation charge sheet has been submitted, cognizance of the offence has been taken and after commitment the case ultimately traveled to the file of Sri Kamla Prasad Sinha, the then Presiding Officer, Fast Track Court, Nawada for trial and disposal.

5. Charge in this case under Section 395 IPC was framed against the appellants.

6. In order to substantiate its case two witnesses have been examined on behalf of the prosecution, they are PW 1 Nawal Singh and PW 2 Ramnandan Singh, who is father of PW 1 and PW 2 has been declared hostile by prosecution.

7. Learned trial court on conclusion of trial has convicted the appellants under Section 395 IPC on the basis of evidence of solitary



evidence of PW 1 Nawal Singh and sentenced them as stated above.

8. Learned counsel for the appellants has assailed the judgment on the ground that according to prosecution it was dark night and evidence of PW 1 shows that it was night of Amabosya and in spite of that such identification of the accused persons, that too, six in numbers, by PW 1 itself creates doubt. Moreover, his evidence in chief shows that he had seen the accused persons in torch light but his cross examination discloses that he has not stated before the police that he had seen the accused persons in torch light. It has further been submitted that apart from that, neither the Doctor nor the I.O. has been examined in this case and other witnesses, including independent witness have not been examined and in such a situation the conviction of the appellants on the basis of sole identification of the witness Nawal Singh (PW 1), which itself does not appear to be unimpeachable in character, does not inspire confidence specially when the fact that it was dark night of Amabasya.

9. On the other hand, learned counsel for the State has supported the judgment of guilt and submitted that PW 1 has identified the accused appellants in the dock and he has stated that he had identified the accused appellants at the time of occurrence and they were known to him from before and as such the conviction of the appellants is just and proper and does not require any interference by this Court.

10. On perusal of evidence it appears that PW 1 is solitary



witness in this case and he claims to have identified the accused appellants during occurrence. However, according to evidence of PW 1 it appears that it was Amabasya night and the contradiction has been taken from the statement made before police in which he has stated that he has not stated before police that he had identified the accused appellants in dark night. As such, identification is itself not free from reasonable doubt. Hence, the identification of accused appellants on such evidence does not inspire confidence, but this aspect of the matter has not been considered by learned trial court while convicting the appellants.

11. On consideration of the entire facts and circumstance as well as evidence on record I find that the appellants are entitled to the benefit of doubt in the present case.

12. In the result, both the 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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