

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Appeal (DB) No.75 of 1995**

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

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Ram Sah son of Sri Gainu Sao, resident of village Pokhana, P.S- Gopalpur, Dist- Bhagalpur

.... .... Appellant/s

Versus

State of Bihar & Ors

.... .... Respondent/s

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**Appearance :**

For the Appellant/s : Mr. Amrit Anunay

For the Respondent/s : Mr. S.N.Prasad A.P.P

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**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA**

**and**

**HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA**

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA)

Date: 30-04-2018

1. Heard Mr. Amrit Anunay, advocate appearing as amicus curiae for the appellant and Mr. S. N. Prasad for the State and perused the record.

2. This Criminal appeal has been preferred against the judgment of conviction and sentence order dated 28.04.1995 and 29.04.1995 respectively passed by learned Additional Session Judge, Naugachia, Dist- Bhagalpur in Session Trial no. 83 of 1993 by which and whereunder he convicted the sole appellant for the offence punishable under section 396 of the Indian Penal Code and accordingly, sentenced him to undergo life imprisonment whereas by the same impugned judgment acquitted co-accused Gainu Sah, Laxman Sah and Jaldhar Yadav of the charges framed against them.

3. PW-5, namely, Kalpna Devi gave her fardbeyan on



27.09.1982 at about 4 a.m at Gopalpur Hospital to Indrajeet Singh ( PW-11) S.I, of Gopalpur Police Station to this effect that on previous night, she was sleeping in her room and her mother-in-law namely, Paro Devi (PW-8) and her Gotni Lacho Devi (PW-2) were sleeping at Varandah of the house and her elder brother-in-law deceased Giriwar Sah and her younger brother-in-law Niranjan Sah (PW-6) and her niece Sashikala Devi (PW-4) were sleeping on the roof of the house. In the meantime, she woke up when she heard the sound of knocking on her door. She noticed that two persons flashing torch entered into her house, took out two boxes from her home and, thereafter, they entered into the room of her Gotni from where they took away boxes and other articles. Similarly, they entered into the room of PW-2 and from where, they also took away boxes and other articles. She also claimed that some of the dacoits went on the roof of his house and started assaulting the deceased Giriwar Sah . She also stated that dacoits were 12 to 18 in number and her mother-in-law, namely, Paro Devi (PW-8) identified the appellant amongst the dacoits and at that time, the appellant was carrying pistol in his hand and had covered his face with galmoucha. PW-8, Paro Devi identified the appellant in the light of torch as well as by the voice of appellant. She further stated that one of the dacoits opened fire on her elder brother-in-law, deceased Giriwar Sah, as a result whereof, he sustained injuries on his head and hands. PW-2 tried to save him but she also sustained injury on her palm. The dacoits fled away from there with looted booty.



After the occurrence, the villagers came there and brought the deceased Giriwar Sah to hospital. PW-5, Kalpna Devi also claimed that there was long standing dispute between the appellant as well as his other family members.

4. On the basis of aforesaid fardbeyan, Gopalpur P.S. Case No. 94 of 1982 under section 395 of the Indian Penal Code was registered and on the same day formal F.I.R was drawn up against the appellant and 12 to 14 unknown dacoits. The case was investigated and after completion of investigation, the investigating officer submitted charge sheet against the appellant and others. The cognizance of the offence was taken and the case was committed to the court of session. The appellant along with three others were put on trial for the offence punishable under section 396 of the Indian Penal Code to which the appellant and other co-accused denied the charges and claimed to be tried.

5. In course of trial, prosecution examined, altogether 12, witnesses and also got examined post mortem report as well as other relevant documents. The statements of the appellant and other co-accused were recorded under section 313 of the Indian Penal Code in which, they denied the prosecution story and claimed their false implication. The defence also got exhibited some documents to prove the enmity.

6. The learned court below after perusing and scrutinizing the evidences available on the record convicted the appellant only on



the basis of identification of PW-8, Paro Devi whereas acquitted the other accused doubting the testimonies of prosecution witnesses.

7. The learned Amicus Curiae, Mr. Amrit Anunay assailed the impugned judgment of conviction and sentence order arguing that the testimonies of prosecution witnesses are full of contradictions and no reliance can safely be placed upon the testimonies of the prosecution witnesses. He further submitted that land dispute and previous enmity between the prosecution party and appellant is an admitted fact and in the light of the aforesaid fact, the possibility of false implication of the appellant could not be ruled out. It is submitted that PW-8 claimed to have identified the appellant in the light of torch flashed by the dacoits but the aforesaid claim of PW-8 appears to be doubtful because it was not possible to identify the dacoits in the light of torch particularly, when the torch is flashed by the dacoits towards PW-8 and moreover, PW-5 admitted in her fardbeyan that PW-8 had disclosed this fact that the appellant had covered his face by Gulmoucha and she identified him by his voice. He further submitted that the identification by voice is a weak piece of evidence and on that basis judgment of conviction against a person cannot be passed. He further submitted that PW-10, Dr. K. K. Das claimed that he did postmortem examination on the dead body of the deceased Giriwar Sah and the aforesaid witness specifically stated that he did not find any firearm injury on the person of the deceased and, therefore, the aforesaid statement of PW-10 creates doubt about the



manner of occurrence because material prosecution witnesses claimed that in course of dacoity, the appellant was carrying pistol in his hand and had opened fire which hit on the hand of the deceased. He further submitted that none finding of firearm injury on the person of the deceased, belies the claim of prosecution witnesses and also creates doubt about the participation of the appellant in the alleged crime.

8. On the other hand, learned Additional Public Prosecutor supported the judgment of conviction and sentence order arguing that almost all the material witnesses stated about the participation of the appellant in the alleged crime and they have, specifically stated that the appellant opened fire on the deceased and in that course PW-2 claimed to save the deceased but she sustained firearm injury on her palm. He further submitted that PW-12 has proved injury report of PW-2 and injury report of PW-2 goes to show that firearm had been used in commission of the aforesaid dacoity because PW-2 had sustained firearm injury and, therefore, even if, PW-10 did not find any firearm injury on the person of the deceased, then also, it cannot be said that the appellant had not participated in the alleged crime. He further submitted that almost all the prosecution witnesses clearly stated about the participation of the appellant in the alleged crime and, therefore, there is no scope for this court to interfere into the impugned judgment of conviction and sentence order.

9. Having heard the contentions of both the parties, we went through the record.



10. We find that PW-5 (informant) claimed in her fardbeyan that the name of appellant was disclosed before her by PW-8 and PW-5 has nowhere, claimed in her fardbeyan that her other family members had also identified the appellant in course of dacoity.

11. No doubt, PW-1, PW-2, PW-3, PW-4, PW-7, PW-8 claimed to have identified the appellant in course of dacoity but all the aforesaid witnesses claimed that they had identified the appellant in the light of torch. It has come in course of evidence that the appellant is next door neighbour of the informant and other witnesses. Almost all the material witnesses stated that the appellant had opened fire on the deceased but the aforesaid claim of the prosecution witnesses is not belied by this fact that PW-10 did not find any firearm injury on the person of the deceased. Therefore, the aforesaid fact creates serious doubt about the manner of occurrence. Furthermore, we find that learned trial court has doubted the testimony of above stated material witnesses in respect of remaining two accused persons but convicted the appellant on the basis of their testimonies but in our view, the learned trial court ought to have acquitted the appellant on the basis of above stated material, contradictions in respect of manner of the occurrence. Moreover, the long standing enmity and land dispute between the parties is admitted and, therefore, possibility of false implications of the appellant could be ruled out and the appellant was entitled to get the benefit of doubt. Therefore, in our view, the impugned judgment of conviction and sentence order cannot



sustain in the eye of law.

12. On the basis of aforesaid discussion, this Criminal Appeal is allowed and impugned judgment of conviction and sentence order are, hereby, set aside. The appellant is acquitted of the charges giving benefit of doubt. The appellant is on bail. He is discharged from the liabilities of his bail bonds.

13. Let first and last page of the copy of this judgment be handed over to learned amicus curiae so that he could take steps for getting his remuneration from Legal Aid Services Committee, Patna High Court, Patna .

**(Hemant Kumar Srivastava, J)**

**(Rajendra Kumar Mishra, J)**

N.K/-

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