

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.55 of 2009

Arising Out of PS.Case No. -0 Year- null Thana -null District- SAHARSA

- =====
1. Chandra Kant Jha, son of late Jageshwar Jha
 2. Kanhaiya Jha, Son of Late Harinarain Jha, both r/v-Pipra, P.S. – Pipra, District-Supaul.

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Krishna Prasad Singh, Sr. Adv.
Mr. Bhaskar Shankar
Mr. Rakesh Singh

For the Respondent/s : Mr. B.M.P. Sinha, APP

=====

CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 02-08-2018

Heard the learned counsel for the appellants as well as the State.

2. The appellants, namely, Chandra Kant Jha and Kanhaiya Jha have been convicted under Section 395 of the Indian Penal Code by the judgment dated 21.01.2009 passed by the learned Additional Sessions Judge, Fast Track Court I, Saharsa in S. Tr. No. 16/1996 (S), arising out of Triveniganj P.S. Case No. 100/1992 and by order dated 22.01.2009, they have been sentenced to undergo R.I. for five years and a fine of Rs. 1000/- each. In default of payment of fine, to further undergo S.I. for one month.

3. In the written report, it is alleged that on the date of



occurrence in the night of 24th/25th Nov., 1992, informant was sleeping along with his family members in his house. At about 11 P.M., he heard sound of knocking door. He also heard sound at Verandah. The informant woke up and climbed over the roof of the house through ladder along with his father and family members. He saw that about five miscreants armed with rifle, *lathi* etc. were standing near the door. 7-8 miscreants armed with gun and *lathi* were standing at the courtyard. The informant identified accused Kanhaiya Jha and Chandra Kant Jha (appellants) of his village. Both were standing at the courtyard with a gun in his hand. Three miscreants climbed over the roof and asked the informant's mother and Bua about the informant. Thereupon, the informant jumped from the roof. The informant identified two accused persons in the light of electric bulb. 8 to 10 miscreants were engaged in looting the household articles including the appellants. Some dacoits were cutting the rod of window. Villagers also woke up on raising alarm and opened fire with their rifles. Due to fear, dacoits fled away towards Western direction. The dacoits looted various household articles as mentioned in the written report. They also assaulted the mother and Fua of the informant by fists, slaps and bamboo sticks. The mother of the informant received injury on her head. One occurrence has also taken place on 29.01.1992 in which Kanhaiya Jha and Chandra Kant Jha



were also involved. The informant claimed that accused Kanhaiya Jha and Chandra Kant Jha have committed dacoity in his house.

4. In this case four witnesses have been examined on behalf of the prosecution.

5. The informant has been examined as P.W. 1. He has stated in his evidence that in the night of 24th/25th Nov., 1992 he was sleeping in his house and heard some noise at the Verandah. He climbed over his roof through ladder with his all family members from where he saw 20 to 25 dacoits. Among them he identified only two accused Kanhaiya Jha and Chandrakant Jha (appellants) standing there with gun in their hand, who were speaking that 'Pakro'. This witness has identified his signature on the *fardbeyan* which has been marked as Ext. 1. In cross-examination, this witness has admitted that accused persons are his villagers and informant's father is a teacher and Hari Narayan Jha, who is the uncle of Chandra Kant Jha, is Secretary of that School and Kanhaiya Jha is son of Hari Narayan Jha. P.W. I has however denied the enmity between his father and father of accused. He has also denied that his father had lodged case against the father of accused Chandra Kant Jha. He has admitted that Dharm Nath Mishra had filed a case as Pipra P.S. Case No. 149/1990 against him. P.W. 1 has further stated that prior to the occurrence Triveniganj P.S. Case No. 14/1992 was instituted against both accused persons under



Section 395 of the Indian Penal Code, which was found false. P.W. 1 has further stated that police had used dog squad which had not gone to the house of accused persons and nothing has been recovered from the house of accused. In para 37 of his cross-examination, this witness has stated that witness Gajendra Jha is his cousin brother and he has filed a case under Section 107 Cr.P.C. against accused Kanhaiya Jha.

6. P.W. 2, Badri Nath Jha is father of informant. He has stated in his evidence that on the relevant date and time of occurrence he was at his house. He saw 20 dacoits in which he identified Kanhaiya Jha and Chandra Kant Jha. In para 8 of his cross-examination, he has denied that he has any enmity with the father of appellants.

7. P.W. 3, Gajendra Jha, has stated in his cross-examination that on the relevant date he was sleeping in his house. After hearing the sound, he woke up and went at the roof of his house. He saw five dacoits entered inside the house after breaking door and looted away articles. He has claimed to identify the appellants. He has admitted in para 6 of his cross-examination that he is cousin brother of the informant. He has filed a case under Section 107 Cr.P.C. against the accused.

8. P.W. 4 is a formal witness, who has identified the writing of Gauri Shankar Singh, A.S.I. of Triveniganj Police Station



on formal F.I.R. which has been marked as Ext. 2.

9. Four witnesses have been examined on behalf of defence.

10. D.W. 1 has told that no occurrence is said to have taken place on the relevant date and time of occurrence. The appellants have been falsely implicated in this case.

11. D.W. 2 has stated that informant and appellants are relatives and there is old land dispute between them. Due to enmity they have been falsely implicated in this case.

12. D.W. 3 is accused himself. He has stated that land dispute is prevailing between them and his nephew Amrendra Jha has lodged Sanha No. 490/92 against the informant and his family member which has been marked at Ext. A. He has also filed order of S.D.M., Supaul, which has been marked as Ext. B. He has also identified certified copy of F.I.R. which has been filed by the uncle of informant against father of accused, which has been marked at Ext. C.

13. D.W. 4 has stated that Narshingh Jha, own uncle of informant, had lodged a case against his father. He has stated that he has filed Pipra P.S. Case No. 149/1990 against the informant. He has further stated that his house is situated just beside the road and the house of informant. This false case has been filed due to land dispute.

14. Mr. Krishna Prasad Singh, learned senior counsel



for the appellants has submitted that out of eight witnesses only three witnesses have been examined by the prosecution. They are father, son and uncle. In the court below, I.O. has not been examined in this case. There is no recovery of any article from possession of the appellants. The important witnesses, namely, mother and sister of the informant have not been examined by the prosecution, who are alleged to have sustained injury on the date of occurrence. There is admitted enmity between the parties. P.W. 2, father of the informant, has stated in para 8 of the case diary before the police that he had not identified the dacoits. P.W. 2 has brought new story during course of evidence in the court after several months that out of 15 dacoits, he identified two dacoits, namely, Kanhaiya Jha and Chandra Kant Jha.

15. This Court after going through evidence of all the witnesses finds that there is enmity prevailing between both parties. Both parties are co-villagers. It is also admitted position that I.O. has not been examined in this case. There is no recovery of any articles from possession of the appellants. It is also admitted position that the mother and sister of the informant have not been examined, who are alleged to have sustained injury. No independent witness has been examined in the case. It further appears that the informant himself has admitted in his cross-examination that accused persons are villagers. Informant's father is a teacher and Hari Narayan Jha, who is uncle of



Chandrakant Jha and father of Kanhaiya Jha, is Secretary of that School.

16. Learned counsel for the appellants has further submitted that prior to filing of this case, the informant (P.W.1) had lodged a Sanha bearing No. 427 dated 25.11.1992 in which he had stated that dacoity has been committed in his house but he did not name any one. Further it appears that P.W. 2 has not named the appellants in his statement under Section 161 Cr.P.C. before police. But he claimed to identify the appellants during his evidence in court. Similarly, P.W. 3 has stated in his statement under Section 161 Cr.P.C. that he reached the place of occurrence on hulla and by that time dacoits had fled away. He came to know the name of appellants from P.W. 1. The I.O. has not been examined in this case which has highly prejudiced the case of defence.

17. Attention was drawn by the learned counsel of defence towards their earlier statement before police under Section 161 Cr.P.C. wherein P.W. 2 and P.W. 3 have not identified the appellants. It is also admitted position that no incriminating article has been recovered from the possession of the appellants.

18. Therefore, this Court is of the view that the prosecution has not been able to substantiate the charge against the appellants beyond all reasonable doubt.



19. Accordingly, the impugned judgment of conviction dated 21.01.2009 and order of sentence dated 22.01.2009 is hereby set aside.

20. This Criminal Appeal is allowed.

21. The appellants are on bail. They are discharged from liability of their bail bonds.

(Sanjay Priya, J.)

Rakhi

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	09.08.2018
Transmission Date	09.08.2018

