

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.276 of 1997

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Anil Yadav, son of Sri Chatradhari Yadav, resident of Sultanganj, P.S.
Sultanganj, Dist. Bhagalpur

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Ms. Sweta Raj, (Amicus Curiae)
For the Respondent/s : Mr.

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CORAM: HONOURABLE THE CHIEF JUSTICE
ORAL JUDGMENT

Date : 01-08-2018

Challenging his conviction for offences under Section 394 read with 412 of I.P.C. by the 5th Additional Sessions Judge, Bhagalpur in Sess. Trial No.512 of 1996 and sentencing him to 7 years rigorous imprisonment, the sole appellant Shri Anil Yadav has filed this appeal. As none is appearing on behalf of the petitioner, Ms. Sweta Raj, advocate, was appointed Amicus Curiae to assist the Court in disposal of the matter.

After having heard learned Amicus Curiae and learned Counsel for the State, the matter is being proceeded with as the matter is pending since 1997 and due to non-availability of the record from the trial court, the matter kept prolonged from time to time.



On enquiry made from the trial court and from the report received from the District & Sessions Judge, Bhagalpur, it is indicated that the records are not traceable and nothing is available. Based on the records provided by the prosecution, the matter is being heard and decided.

It is the case of the prosecution that P.W.5 Sashinath Jha recorded his fardbeyan stating that on the night of 30th of October, 1995 he was sleeping in the Veranda of his house when someone knocked at the door. On being asked as to who it is, he was informed that one Anil Yadav has come and he requested for opening the door. The informant, P.W.5 Sashinath Jha, is said to have opened the door when the appellant accused Anil Yadav and co-accused Naresh Yadav, Jeetan Yadav @ Jitendra Yadav and Pappu Yadav are said to have entered into the house of the informant, put a pistol on his head and asked him to give all his belongings. When he did not accede, an Almirah was opened and cash and ornaments were tried to be taken away. On hearing the commotion, wife of the informant, namely Smt. Sushila Devi, P.W.1 came from the Pooja room and it is said that Anil Yadav caught hold of her and tried to snatch her Silver chain on which she resisted by putting her two hands on the chain and when commotion was made it is said that all the people in the locality



came there, Anil Yadav and other co-accused were apprehended from the spot and from the person of Anil Yadav a pistol and the Silver Chain were recovered by the Investigating Officer.

Based on the aforesaid, the four accused persons, as detailed hereinabove, were prosecuted. All the three co-accused have been acquitted, but it is only the present appellant Anil Yadav who has been convicted under Section 394 and 412 of I.P.C. and sentenced to undergo 7 years' rigorous imprisonment.

Having heard learned Amicus Curiae and on going through the record, it is seen that the prosecution examined, in all, nine witnesses in support of the claim. They were P.W.1 Sushila Devi, P.W.2 Krishna Sharan Mishra, who is said to have come to the spot and apprehended the appellant Anil Yadav, P.W.3 Suman Kumar Jha, son of the informant, P.W.4 Pawan Kumar Jha, another son of the informant, P.W.5 the informant Sashinath Jha, P.W.6 Shambhu Sharan Mishra, who is also said to have come to the spot on hearing the commotion, P.W.7 Santosh Kumar Yadav, a neighbour who had come to the spot and P.W.8 Pankaj Kumar Mishra, also a neighbour who had come to the spot on hearing the commotion and P.W.9, the Investigating Officer. All the witnesses to the incident, except P.W.1, the wife of the informant, have turned hostile and have denied the occurrence itself. Even P.W.5



Sashinath Jha, the informant, has not supported the case of the prosecution and two more eye-witnesses to the incident, the sons of the informant, namely P.W.3 Suman Kumar Jha and P.W.4 Pawan Kumar Jha, denied having seen the incident or identified the accused persons. As far as the other witnesses who came to the spot on hearing the commotion, namely, P.W.6 Shambhu Sharan Mishra and P.W.7 Santosh Kumar Yadav are concerned, they say that they did not see any incident and P.W.8 Pankaj Kumar Mishra denies having seen the incident or being present in the vicinity of the place of occurrence on the ground that he had gone to Nepal. The only evidence against the appellant is the statement of Sushila Devi and that of the Investigating Officer, P.W.9.

As far as the statements of P.W.1 and P.W.9 are concerned, they speak about apprehending the culprits on the spot, but on the same set of evidence all the three co-accused, namely, Naresh Yadav, Jeetan Yadav @ Jitendra Yadav and Pappu Yadav stand acquitted, presumably because the Investigating Officer submits that they were not present in the crowd which had only apprehended Anil Yadav. So far as the appellant Anil Yadav is concerned, he has been implicated only because the Investigating Officer says that he was taken into custody when he visited the spot. However, there is no evidence in support of the aforesaid



inasmuch as the other police officers, who were present at the time of apprehending of this appellant have not been examined. No independent witness to apprehension of this appellant has been examined. All the witnesses, including the informant and his sons have turned hostile and it is a case where the benefit of all these has to be granted to the appellant and I see no reason to disallow the prayer made in the appeal only on the basis of such an evidence which is not supported or corroborated by any eye-witness who have turned hostile.

Keeping in view the aforesaid, the appeal is allowed. The appellant's conviction for offences under Section 394 read with 412 of I.P.C. by the 5th Additional Sessions Judge, Bhagalpur in Sess. Trial No.512 of 1996 and the order sentencing him to 7 years rigorous imprisonment is set aside. The appellant Anil Yadav is acquitted of the charges. He is already on bail. He is discharged from the liability of the bail-bonds.

(Rajendra Menon, CJ)

K.C.Jha/Uma/-

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