

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.52 of 2011

Shibu Sahani, Son of Late Faturi Sahani, resident of village- kaniya Inar, P.S.
Gaighat, District- Muzaffarpur.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Ganesh Prasad Singh, Advocate.
Mr. Prabhat Kumar Singh, Advocate.

For the Respondent/s : Mr. Parmeshwar Mehta, , APP

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR
CAV JUDGMENT

Date : 18-08-2018

The present appeal has been preferred against the judgment and conviction dated 15.12.2010 and 21.12.2010 respectively passed by learned Sessions Judge, Muzaffarpur in Sessions Trial No. 630 of 2007, thereby the appellant has been convicted under Section 412 of the Indian Penal Code and sentenced to undergo rigorous imprisonment of five years, though acquitted all three accused persons including the appellant from charges under Sections 395 and 397 of the Indian Penal Code.

2. The prosecution case is based on the Fardbeyan of dated 17.06.2007 of Arbind Kumar, Informant (PW-4). The crime of dacoity was committed in the house of the Informant in the mid night of 16.06.2007 while all the family members were sleeping. The informant woke up hearing sound of sudden



breaking of the door then dacoits entered inside. All were armed with pistol and assaulted the informant with the butt of the pistol and committed dacoity in the house and took away money and jewelries and other items. He identified one of the dacoits and after committing dacoity all escaped away. The identified accused persons are named in the FIR as Kailash Mandal, Bindeshwar Rai and a person of village Gaushnagar. The informant also disclosed the description of looted articles.

3. The police after registering the FIR in the matter proceeded for investigation and on its completion submitted charge-sheet. During course of investigation one of the looted jewelries was recovered from the house of the present appellant leading to his disclosure made in his confessional statement and the same was also put on TIP and was identified by the Informant and other inmate of the house.

4. Learned counsel appearing on behalf of the Appellant submits that none of the witnesses has identified the Appellant participating in the dacoity either in the TIP or in the Court during trial so all three accused put on trial were acquitted of the charges under Sections 395 and 397 of the Indian Penal Code however the Appellant was convicted under Section 412 of the Indian Penal Code on identification of jewelry recovered from



his house, but in the TIP, similar types of ornaments were not placed along with the recovered one, so TIP was not held according to rules.

5. Whereas, learned counsel appearing on behalf of the State submits that during course of investigation, confessional statement was made by the Appellant and one jewelry was recovered from his house and the same was put on TIP, seizure list of the jewelry is marked as Ext. 4 which stand proved by the prosecution along with TIP chart (Ext.-5) and jewelry recovered from the house of Shibu Sahni, Appellant was identified by Arbind Kumar (P.W. 4) and Ashok Mandal (P.W. 8) inmates of the house. So there is evidence on the record with regard to recovery of the looted jewelry in dacoity from the house of Shibu Sahni, the Appellant.

6. Having considered the rival submission and on perusal of evidence on the record, the Court finds that there is cogent and reliable evidence available on record that one of the looted jewelries from the house of Arbind Kumar, Informant (P.W. 4) was recovered from the house of Shibu Sahni, Appellant. Recovery of jewelry from the Appellant's house was made by Nagendra Kumar (P.W. 9), the Investigating Officer of the case and the same was put for identification mixed with similar



jewelries as evident from Ext. 5 (TIP chart) and same was identified by to witnesses Arbind Kumar (P.W. 4) and Ashok Mandal (P.W. 8). Hence, on analysing the evidence on record it is held that the prosecution has been able to prove that the Appellant has dishonestly received one of the jewelry stolen in the commission of the dacoity from the house of Arbind Kumar (P.W. 4), so the trial court has rightly convicted Shibu Sahni, the Appellant under Section 412 of I.P.C. However, material on record shows that it is the first offence committed by the Appellant and no other earlier crime was proved against him before the trial court and had remained in imprisonment in this case for three and half years, so the sentence awarded to the Appellant is modified to the extent already he had undergone to the imprisonment of three and half years.

7. With this modification in the sentence, the appeal stands dismissed.

(Arun Kumar, J)

sujit/-

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