

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.136 of 2014

Arising Out of P.S. Case No.-76 Year-2011 Thana-PIPRAHI District-SHEOHAR

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Ram Pravesh Sahani, Son of Abhilakh Sahni, Resident of Village Hanumannagar, Police Station- Rajepur, District- Motihari (East Champaran).

.... Appellant

Versus

The State of Bihar

.... Respondent/Opposite Party

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Appearance :

For the Appellant : Mrs. Rashmi Jha, Adv.
Mr. Abhishek Kumar, Adv.

For the Respondent/O.P. : Mr.

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT & ORDER

Date: 18-06-2018

The appellant/Ram Pravesh Sahani has been convicted for the offence punishable under Section 412 of the Indian Penal Code (*in short "the I.P.C."*) by judgment dated 03.01.2014, passed by the learned 1st Additional District & Sessions Judge, Sheohar in Sessions Trial No. 77 of 2012, arising out of Piprahi P.S. Case No. 76 of 2011 and by order dated 08.01.2014/10.01.2014, he has been sentenced to undergo rigorous imprisonment for ten years, to pay a fine of Rs. 25,000/- and in default of payment of fine to further



suffer rigorous imprisonment for one year.

2. A *dacoity* had taken place in the night of 15.07.2011 in the houses of many persons of the village including P.W. 15, the informant. The villagers got up and tried to chase the miscreants who were about 18 to 20 in number and who were effecting their retreat after the occurrence. Later, with the help of the police party, the appellant was arrested, who was found to be in possession of a black bag. On inquiry by the police party as also by the villagers, he confessed about his participation in the occurrence and on his showing, certain articles were recovered from a sugarcane field. A case, therefore, was registered *vide* Piprahi P.S. Case No. 76 of 2011, dated 16.07.2011, for the offence under Section 395 of the I.P.C. against 12 to 14 unknown miscreants.

3. Later, charge-sheet was submitted for the offences punishable under Sections 395 and 412 of the I.P.C. against the appellant and the investigation was kept pending with respect to the other accused persons.

4. Cognizance under the aforesaid sections of the I.P.C. was taken and the case was committed to the Court of Sessions for trial.

5. At the trial, twenty-one witnesses were examined in support of the prosecution version and the



learned Trial Court, on perusal of the deposition of the aforesaid prosecution witnesses, came to the conclusion that no offence under Section 395 of the I.P.C. was made out against the appellant and he was only liable to be prosecuted/punished for the offence under Section 412 of the I.P.C. because of recovery of the stolen articles at his instance. As such, he was convicted under Section 412 of the I.P.C. and was sentenced accordingly as stated above.

6. The learned Advocate appearing for the appellant has submitted that out of the twenty-one witnesses offered on behalf of the prosecution, but for P.W. 8, nobody has identified the appellant. Though the aforesaid witnesses have identified the articles which are said to have been recovered, but have not identified the appellant. In the F.I.R., the informant (P.W. 15) had stated that he could identify the miscreants, as he had seen their faces in the light of the torch flashed by them.

7. P.W. 5 and P.W. 7 have been declared hostile.

8. P.W. 8, during his deposition, has stated that on the day of the occurrence, he was sleeping in his house and on hearing the noise coming from the house of one Ram Narayan Mahto, he went there. It was only there that he learnt that *dacoity* have been committed in the houses of Ram Narayan Mahto, Ram Naresh Mahto, Nawal Sahani and Ram



Ratan Das. In his deposition, he has further stated that the miscreants were chased by the police and one such miscreant was arrested with the looted articles. He disclosed his name as that of the appellant. He was identified by P.W. 8 in the Court. However, from the deposition of P.W. 8, it further appears that he had seen the appellant for the first time in Court. This obviously means that P.W. 8 had not identified him either committing *dacoity* in the houses of the villagers or fleeing away from the place of the occurrence. Had it not been the case, he would not have stated before the Court that he had seen the appellant for the first time in the Court only. In that view of the matter, even his evidence, with regard to the identification of the appellant, cannot be accepted.

9. Precisely for the aforesaid reasons, the Trial Court rightly acquitted the appellant under Section 395 of the I.P.C.

10. However, certain articles are said to have been recovered from the possession of the appellant.

11. Learned Advocate appearing for the appellant, in that context, has submitted that the recovery is absolutely doubtful. The reason accorded is that if the appellant was caught on chase by the police, then it was not possible for recovering so many articles from his possession. That apart, the recovery is said to have been made from a



sugarcane field. None of the witnesses offered on behalf of the prosecution have talked about any such articles being thrown by the accused persons who were fleeing away, much less the appellant. The appellant was only found to be in possession of a black bag which did not contain anything.

12. The other reason for doubting the recovery of the stolen articles from the possession of the appellant is that those articles are articles of common use which can be found in any household. In the absence of those articles having been found from the personal or custodial possession of the appellant, even the charge under Section 412 of the I.P.C., cannot be saddled on him. The only reason perhaps appears to be the extra judicial confession of the appellant before the police officers conducting the chase and the villagers who had arrested him.

13. Learned Advocate for the appellant has then referred to the statement of the defence witness, who has stated that the appellant had come to the village on the day of the occurrence for meeting one of his relatives. On the cries of the villagers that a *dacoity* had taken place, the appellant also ran towards the house of the villagers where *dacoity* had been committed. When he found that the villagers were running after the miscreants, who were trying to escape, he too ran along with the villagers. Since he was



not known by the villagers as being a person of a distinct village, he was caught hold of by the villagers on a mistaken identity.

14. The deposition of P.W. 21, the Investigating Officer of this case, further makes it evident that the appellant was apprehended by the villagers and only, thereafter, the police party arrived. It was before the villagers that the appellant is said to have made a disclosure that he had participated in the occurrence.

15. Beyond the aforesaid material, there is nothing in the records of this case to justify the conviction of the appellant under Section 412 of the I.P.C.

16. The fact that the appellant was arrested on hot chase and was found to be in possession of a black bag only, creates serious doubts about the correctness of the prosecution version regarding the recovery of the stolen articles from the possession of the appellant. That apart, since the stolen articles were found to be thrown in a sugarcane field and none of the witnesses have come forward to say that the appellant had thrown those articles in the sugarcane field or had concealed them, no conviction could be recorded as against him under Section 412 of the I.P.C. The falsity of the allegation further gets confirmed by the fact that the appellant was arrested on hot chase. If that be so, there



was no time for the appellant to have either received the stolen articles or of keeping it for preventing it from being identified by the villagers.

17. Thus, the conviction of the appellant under Section 412 of the I.P.C. is absolutely unjustifiable.

18. For the aforesaid reasons, the judgment and order of conviction cannot be sustained in the eyes of law. The judgment of conviction dated 03.01.2014 and order of sentence dated 08.01.2014/10.01.2014, passed by the learned 1st Additional District & Sessions Judge, Sheohar in Sessions Trial No. 77 of 2012, arising out of Piprahi P.S. Case No. 76 of 2011, are, hereby, set-aside.

19. The appeal is, accordingly, allowed.

20. The appellant/Ram Pravesh Sahani is in custody. He is directed to be released forthwith from jail, if not wanted in any other criminal case.

21. Let a copy of this judgment be transmitted to the Superintendent of concerned jail for necessary compliance and record.

(Ashutosh Kumar, J)

Praveen-II/-

AFR/NAFR	NAFR
CAV DATE	N/A
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