

IN THE HIGH COURT OF JUDICATURE AT PATNA

(Against the judgment of conviction dated 17.01.2003 and order of sentence dated 18.01.2003 passed by Shri S.M.I.I.F., Alam, Presiding Officer, Additional Court No.-I, F.T.C., Begusarai in Sessions Trial No. 337 of 1995, arising out of Muffasil P.S. case no. 335 of 1994)

Criminal Appeal (SJ) No.67 of 2003

=====

Sanjay Kumar Singh @ Sanjay Singh, son of late Naresh Pd. Singh, resident of village- Anandpur, P.S.- Town, Dist.- Begusarai.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

With

=====

Criminal Appeal (SJ) No. 93 of 2003

=====

Dilip Sah, son of Sri Kusheshwar Sah, resident of Village- Baghi, P.S.- Town, Distt.- Begusarai.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

=====

Appearance :

(In CR. APP (SJ) No.67 of 2003)

For the Appellant/s : Mr. Ritwaj Raman, Advocate

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

(In CR. APP (SJ) No.93 of 2003)

For the Appellant/s : Mrs. Sudha Ambastha, Advocate

For the Respondent/s : Mr. Bipin Kumar, APP

=====

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

Date: 13-01-2018

Both the appeals have been filed against the judgment of conviction dated 17.01.2003 and order of sentence dated 18.01.2003 passed by Presiding Officer, Additional Court No.-I, F.T.C., Begusarai in Sessions Trial No. 337 of 1995, arising out of Muffasil P.S. case no. 335 of 1994, whereby the appellants have been



convicted under Section 392 of the Indian Penal Code and sentenced to under go RI for five years. However, the appellants have been acquitted for the offence under Sections 395 of the Indian Penal Code.

2. The prosecution case, in brief, is that one Onkar Singh (P.W.13) gave his statement on 22.12.1994, at about 6.00 P.M., before the officer-in-charge of Singhoul O.P. (P.W.14) that on 22.12.1994, at about 5.30 A.M. he along with one Santosh Kumar Singh (P.W.1) proceeded for Patna from their houses to purchase medicine having an amount of Rs.90,000/- and 30,000/- respectively. It is said that when they reached in the midst of Ulao-aerodrome, suddenly two persons from south and two from left came, among them he identified one Tuntun Sah, who pointed out his pistol towards the informant and asked to hand over the bag, in the meantime, other miscreants took away the bags containing the said cash amount from their possession. Thereafter they threatened not to make noise and they ran away. When alarm was raised by them, one shot was fired by the miscreants. The informant alleged that the accused are said to be in the age group of 20-30 years. However, the informant and his companion (P.W.13 and P.W.1) stated that they can identify the miscreants.

3. On the basis of the said statement, the police registered formal F.I.R., being Muffasil (Singhoul O.P.) P.S. case no.



335 of 1994 for the offence under Sections 395 of the Indian Penal Code.

4. The police after investigation submitted charge-sheet against the appellants. Thereafter the learned Magistrate took cognizance of the offence and committed the case to the Court of Sessions. On framing of charge, the appellants pleaded not guilty and they were subjected to trial by the Fast Track Court.

5. The prosecution examined altogether 15 witnesses. P.W.1 is Santosh Kumar Singh, P.W.2 is Soney Lal Sah, P.W.3 is Yogender Sah, P.W. 4 is Dashrath Pd. Singh, P.W.5 is Ganesh Singh, P.W.6 is Ramlagan Sah, P.W.7 is Gopal Prasad Singh, P.W.8 is Ramlagan Mistri, P.W.9 is Deo Narayan Yadav, P.W.10 is Shambhu Singh, P.W. 11 is Anil Singh, P.W.12 is Ramakant, P.W.13 Onkar Singh is the informant of the case, P.W.14 is Krishna Singh and P.W.15 is Arun Kumar Singh.

6. The defence has also examined one witness, namely, Hare Ram Singh (D.W.1), who deposed that he has filed a case against Krishna Singh.

7. The trial court on scrutiny of the evidence convicted the appellants for the offence under Section 392 of the Indian Penal Code.

8. Learned counsel appearing on behalf of the



appellants submitted that the case was registered against Tuntun Sah and three unknown. However, in the present case, the police submitted charge-sheet against six persons. Out of six persons Shiv Jee Sah died during trial and Tuntun Sah also died during the pendency of the appeal. Learned counsel for the appellants submitted that the trial court has failed to appreciate the various aspects of the matter, which indicates innocence of the appellants. He firstly submitted that in the present case apart from Tuntun Sah, the case was registered against three unknown, as such, it was incumbent upon the prosecution to identify the three unknown, but during trial none of the appellants were put on Test Identification Parade for identification and as such conviction of the appellants without T.I. Parade is without any evidence. He submitted that in the present case, the police has completed perfunctory investigation and merely on the basis of suspicion charge-sheeted the appellants. He submitted that the definite case of the prosecution was that 90,000/- and 30,000/- currency was in the denomination of Rs.50/- and Rs.100/-. The so-called seizure from the house of the appellants is not conclusive material to suggest that the money/currency seized from the residence of the appellants, in fact was the looted currency, as the prosecution has miserably failed to explain that the amount recovered from the house of the appellants were of denomination of Rs.50/- and Rs. 100/- and as such learned



counsel appearing on behalf of the appellants submits that in absence of specific case of the prosecution that the money/currency recovered from the house of the appellants were of the same denomination, conviction of the appellants is not safe.

9. Learned counsel for the appellants submitted that in the present case on the same strength of evidence and material Shankar Sah and Sanjeet Kumar Sah were acquitted and the trial court adopted two different yardsticks while acquitting Shankar Sah and Sanjeet Kumar Sah and convicting the appellants in this case. The trial court was required to adopt one and same yardstick while accepting or discarding the evidence for convicting and acquitting the accused. Since the trial court disbelieved the same material of recovery of amount from the house of Shankar Sah to connect him with the commission of crime, the appellants were also entitled to the same treatment, as in their case also, the seized money was not of distinctive character, which can be conclusively connected with the commission of the crime.

10. Learned counsel next submitted that in the present case, not only the investigation was perfunctory, but the trial court also committed gross error in conducting the trial. While examining the accused persons under Section 313 Cr.P.C., the trial court has only completed formality. The requirement of examination of the accused



under Section 313 of the Cr.P.C. is not a formality, it is the mandatory requirement to ensure fair trial. The Hon'ble Supreme Court has time and again reiterated that the court while examining the accused persons under Section 313 of Cr.P.C. is under obligation to confront the accused persons with all the adverse circumstances and evidence, which has surfaced during the trial. In the present case, only formality was completed and the accused persons were not confronted with the evidence that has come on record during the trial, rather the trial court in a peculiar manner posed a question without the evidence to substantiate allegation against the appellants and asked question what you have to say on the allegation, such kind of query by the trial court to the accused, does not satisfy the requirement under Section 313 of Cr.P.C. The departure in the matter of examination of the accused persons under Section 313 of Cr.P.C. goes to the root of the case and vitiates the entire trial. Reference in this connection may be made to the judgment of the Apex Court reported in the case of **Sukhjit Singh Vs. The State of Punjab**, reported in (2014) 10 SCC 270, para 11 to 14 is settler on the point. Para. 11 to 14 of the judgment is quoted herein below for ready reference:

“11. In this context, we may profitably refer to a four-Judge Bench decision in *Tara Singh v. The State*, reported in AIR 1951 SC 441, wherein, Bose, J. explaining the significance of the faithful and fair



compliance with Section 342 of the Code as it stood then, opined thus:

"30. I cannot stress too strongly the importance of observing faithfully and fairly the provisions of Section 342 of the Criminal Procedure Code. It is not a proper compliance to read out a long string of questions and answers made in the committal court and ask whether the statement is correct. A question of that kind is misleading. It may mean either that the questioner wants to know whether the recording is correct, or whether the answers given are true, or whether there is some mistake or misunderstanding despite the accurate recording. In the next place, it is not sufficient compliance to string together a long series of facts and ask the accused what he has to say about them. He must be questioned separately about each material circumstance which is intended to be used against him. The whole object of the section is to afford the accused a fair and proper opportunity of explaining circumstances which appear against him. The questioning must therefore be fair and must be couched in a form which an ignorant or illiterate person will be able to appreciate and understand. Even when an accused person is not illiterate, his mind is apt to be perturbed when he is facing a charge of murder. He is therefore in no fit position to understand the significance of a complex question. Fairness therefore requires that each



material circumstance should be put simply and separately in a way that an illiterate mind, or one which is perturbed or confused, can readily appreciate and understand. I do not suggest that every error or omission in this behalf would necessarily vitiate a trial because I am of opinion that errors of this type fall within the category of curable irregularities. Therefore, the question in each case depends upon the degree of the error and upon whether prejudice has been occasioned or is likely to have been occasioned. In my opinion, the disregard of the provisions of Section 342 of the Criminal Procedure Code, is so gross in this case that I feel there is grave likelihood of prejudice."

12. In *Hate Singh Bhagat Singh v. State of Madhaya Bharat*, reported in AIR 1953 SC 468, Bose, J. speaking for a three-Judge Bench highlighting the importance of recording of the statement of the accused under the code expressed thus:-

"8. Now the statements of an accused person recorded under Sections 208, 209 and 342, Criminal P.C. are among the most important matters to be considered at the trial. It has to be remembered that in this country an accused, person is not allowed to enter the box and speak on oath in his own defence. This may operate for the protection of the accused in some cases but experience elsewhere has shown that it can also be a powerful and impressive weapon of defence in the hands of an innocent man. The statements



of the accused recorded by the Committing Magistrate and the Sessions Judge are intended in India to take the place of what in England and in America he would be free to state in his own way in the witness-box."

13. The aforesaid principle has been reiterated in *Ajay Singh v. State of Maharashtra*, reported in (2007) 12 SCC 341, in following terms:

"14. The word "generally" in sub-section (1)(b) does not limit the nature of the questioning to one or more questions of a general nature relating to the case, but it means that the question should relate to the whole case generally and should also be limited to any particular part or parts of it. The question must be framed in such a way as to enable the accused to know what he is to explain, what are the circumstances which are against him and for which an explanation is needed. The whole object of the section is to afford the accused a fair and proper opportunity of explaining circumstances which appear against him and that the questions must be fair and must be couched in a form which an ignorant or illiterate person will be able to appreciate and understand. A conviction based on the accused's failure to explain what he was never asked to explain is bad in law. The whole object of enacting Section 313 of the Code was that the attention of the accused should be drawn to the specific points in the charge and in the evidence on which the prosecution claims that the case is



made out against the accused so that he may be able to give such explanation as he desires to give."

14. In view of the aforesaid enunciation of law, there can be no scintilla of doubt that the when the requisite questions have not been put to the accused it has caused immense prejudice to him, more so, when there is no evidence to establish his complicity in the alleged abduction."

11. In addition thereto in the present case, the seizure witnesses, namely, P.W.5 and P.W.7 have not supported the seizure, which is basis of the prosecution case. P.W.5 has become hostile and P.W.7 has deposed before the Court that nothing was seized in his presence. From the deposition of P.W. 5 and P.W.7, it appears that the mandatory requirement of search and seizure, as contemplated under the Code of Criminal Procedure was not followed. The cumulative effect of departure in the matter of seizure and the fact that P.W.5 has turned hostile and not supported the prosecution case on the point of seizure of the looted amount, lack of distinctive feather to the currency to connect the appellants conclusively with the commission of crime of loot, as the minimum requirement to establish that the currency in the denomination of Rs.50/- and 100/-, which was looted in the crime was recovered from the possession of the appellants.

12. In addition thereto, the Court also finds substance



in the submission of the learned counsel for the appellants that the trial court has miserably failed to conduct fair trial for the reason that when the case is registered against unknown, the minimum requirement to ensure fair justice and to ensure that only the real culprit is convicted, the requirement was to put the accused on T.I.Parade for identification so that the prosecution may identify the real miscreants, who committed the crime, which was not done in the present case. In addition thereto the mandatory requirement under Section 313 of Cr.P.C., as per the law laid down by the Hon'ble Apex Court in the case of **Sukhjit Singh** (supra), the trial court has committed gross error in making a departure from the mandatory requirements under Section 313 of Cr.P.C. The Court also finds substance in the submission of the counsel for the appellants that the trial court was not justified in adopting two yardsticks, one for acquitting Shankar Sah and Sanjeet Kumr Sah and the other for convicting the appellants.

13. In the totality of the facts and circumstances discussed hereinabove, the conviction of the appellants is unsustainable and as such the judgment of conviction and order of sentence passed by the trial court is hereby set aside and the appellants are acquitted from the charge leveled against them. Since the appellants are on bail, they are discharged from the liabilities of



their bail bonds.

14. In the result, both the appeals are allowed.

(Anil Kumar Upadhyay, J)

Uday/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	23.01.2018
Transmission Date	23.01.2018

