

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No 19 of 2004

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

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Ramadhar Singh, son of late Banaras Singh, resident of Village – Suhai Gajan, PS –
Baniapur, District – Saran at Chapra

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

WITH
Criminal Appeal (SJ) No 55 of 2004

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

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Sanjay Singh, son of Kashi Nath Singh, resident of Village – Sohail Shahpur, Police
Station – Baniapur, District – Saran at Chapra

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

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Appearance :

(In CR APP (SJ) No 19 of 2004)

For the Appellant/s : M/s Anirudh Kumar Sinha,
Abhijit Ranjan, Advocates

(In CR APP (SJ) No 55 of 2004)

For the Appellant/s : Mr Ranbir Singh, Amicus Curiae

For the Respondent/s

(In both the cases) : Mr Binod Bihari Singh, APP

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CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

CAV JUDGMENT

Date: 21-06-2018

These two appeals have been filed challenging the order
of conviction dated 09.12.2003 passed by the Court of Additional
Sessions Judge VI, Chapra in Sessions Trial No 498 of 1994.

2 As per the order of conviction, the appellants have
been convicted for the offence punishable under Section 395 of Indian
Penal Code (for brevity, *IPC*) and have been directed to undergo



rigorous imprisonment for five years.

3 The prosecution case is based on the *Fardbayan* of PW 7 Bali Rai, the informant recorded on 08.02.1994 alleging that late in the night of 07.02.1994 at about 11 pm, two criminals entered into his house. Upon hearing some sound, he opened door of his house. It is alleged that one of the criminals threatened him with life to maintain silence at gun point. His wife Raj Pati Devi thereafter caught hold of him and pushed him back. It is alleged that 7 – 8 criminals came inside the house and indulged in looting of properties. He, thereafter, alleges that he took the staircase to the roof of his house and from there, he jumped on a heap of sand towards the south of his house and made noise to attract others, but none responded. It is alleged that other inmates of the house opened their doors out of fear and the dacoits indulged in looting of all the rooms. It is alleged that Firangi Rai, Kanhaiya Rai and Prem Chand Rai were sleeping on the *Darwaza* and his brother Jhalku Rai and uncle Dwarika Rai were also sleeping on the *Darwaza*. The informant (PW 7) has alleged that the dacoits took away eight briefcases, wooden box and two other briefcases and kept the same at the *Darwaza*, where they broke open the boxes and decamped with the articles being ornaments, clothes and cash of Rs 25,000/-. It is alleged that the dacoits fled away towards north. The informant (PW 7) has stated that Devanti Kumari



(PW 1) has identified Ramadhar Singh, Appellant of Cr Appeal (SJ) No 19 of 2004. Informant (PW 7) himself claims to have identified Binod Singh and Rana Pratap Singh of Village – Sohail Gajan and Sanjay Singh of Village – Sohail Shahpur who is the Appellant of Cr Appeal (SJ) No 55 of 2004.

4 On basis of the *Fardbayan* of Bali Rai, the informant (PW 7), Baniapur Police Station Case No 15 of 1994 was registered, the following day on 08.02.1994 under Section 395 of IPC against Ramadhar Singh, Sanjay Singh, Binod Singh and Rana Pratap Singh. Investigation in respect of other accused persons was kept pending.

5 After taking cognizance of the offence, the case was committed to the Court of Session. Charges were framed against the accused persons on 02nd July, 1994 by the learned Sessions Judge, Chapra. Upon transfer, the case came on the file of the Court of Additional Sessions Judge VI, Chapra on 20.01.2000 wherein the trial was conducted.

6 Accused persons, who are appellants herein, pleaded not guilty and claimed to be tried. They have pleaded innocence and their false implication in this case. Appellant Ramadhar Singh has also alleged a motive for his false implication and, in support of this allegation, examined one witness, namely, Shambhu Singh.

7 In the trial, the prosecution has altogether examined



seven witnesses. PW 1 Devanti Kumari is niece of the informant. PW 2 Jhalku Rai is brother of the informant. PW 3 is Punam Devi who happens to be *Bhabhi* of informant and mother of PW 1. PW 4 Dharmdeo Rai, PW 5 Saroj Kumar Yadav are co-villagers of the informant. PW 6 Kamaldeo Rai is nephew of the informant. PW 7 is Bali Rai, the informant himself.

8 The broad submissions made on behalf of the appellants are that the entire case of the prosecution is under a shadow of doubt. It is submitted by the appellants' counsel that none of the articles, alleged to have been looted, have been recovered, the Investigating Officer (for brevity, *IO*) has not been examined, the alleged injuries have also not been examined and that the manner of occurrence could not be proved by the prosecution in the trial. The submission is that the fact that Sakaldeo Rai and Bhikhan Rai (FIR witnesses) have not been examined by the prosecution is a clear indication of the falsity of the allegations made against the appellants. It is also submitted that the prosecution witnesses are not independent witnesses and are, in some manner or the other, interested witnesses in favour of the prosecution party. The manner of identification and the source of light cast a serious shadow of doubt on the case of the prosecution. It is alleged that there is serious contradiction between the deposition of the prosecution witnesses which is vital to the



prosecution case.

9 On behalf of the State, the learned Additional Public Prosecutor has submitted that the deposition of the prosecution witnesses fully supports the prosecution case and that the prosecution case has been proved beyond all doubts in the trial.

10 PW 1 Devanti Kumari has stated the date and time plus the place of occurrence as narrated in the *Fardbayan*. She claims to recognize Appellant Ramadhar Singh. She is student of Class IX. She has spoken about a lantern in the house and assault by *Musal* upon her mother. She has alleged that altogether there were 20 dacoits whose faces were visible (open). She has also said that one of the accused Ramadhar Singh (Appellant in Cr Appeal (SJ) No 19 of 2004) has his own land adjacent to the Informant's house and he is known to all family members. She has also said that appellant Ramadhar Singh had recently mediated in a dispute between the informant and PW 2 Jhalku Rai.

11 PW 2 Jhalku Rai has claimed to be sleeping in front of the house in *Dalan*. He has stated that he was awoken by two dacoits and that he stayed there. He has not stated how many dacoits he had seen. In fact, he has stated that Bali Rai, the informant (PW 7) has told him that he had recognized four dacoits. He claims to have identified appellant Ramadhar Singh, Sanjay Singh, Rana Pratap Sah.



He has stated that appellant Ramadhar Singh was having substantial lands and was letting out the same on “*Batai*” for farming. He has stated that the IO had come on the next day at 8 am. He has also stated regarding the litigating terms with the informant and regarding filing of Title Suit, 10 – 11 days back. He claims to know Sanjay Singh from before and that Sanjay Singh was having a flour mill. PW 2 has not identified anyone in test identification parade and eight days after the occurrence, his statement has been recorded by the Deputy Superintendent of Police.

12 PW 3 Punam Devi, who is *Bhabhi* of the informant (PW 7), has stated that she was sleeping in the room with Devanti Kumari (PW 1). She has stated that three dacoits took three boxes, gold ornaments and cash of Rs 25,000/-. She has also stated of being inflicted with Musal blow. She has denied that PW 1 Devanti Kumari disclosed the name of any dacoit even though PW 1 Devanti Kumari has narrated about the dacoity to PW 3. She has stated that children were at home and that the informant has not told her the name of any dacoit.

13 PW 4 Dharmdeo Rai, who is a co-villager, has stated that he came after the occurrence. He has not disclosed name of any dacoit but has only supported the factum of dacoity. PW 5 Saroj Kumar Yadav, another co-villager has expressed total denial of any



knowledge regarding the incident. PW 6 Kamaldeo Rai, nephew of the informant has said that he was sleeping with his wife and that the dacoits assaulted him with *lathi* and also assaulted his grandmother. He has not identified the appellant Sanjay Singh. He has also said that appellant Ramadhar Singh was known since long and that he has not seen appellant Ramadhar Singh in the occurrence. He has stated that PW 7 Bali Rai has told him about the other three persons.

14 PW 7 (informant) has also deposed in the trial Court. He has claimed to have recognized the appellant Sanjay Singh. He has also stated that his wife Rajpati Devi came to save him. However, she has not been examined. He has also alleged 7 – 10 boxes to have been taken away. Though in the *Fardbayan*, PW 7, the informant has stated that Dwarika Rai was also sleeping with him, but in his deposition at the trial, he has stated that Dwarika Rai was not there. PW 7 has supported the case, as narrated in the FIR at the trial. He has said that only family members were inside the house. He has deposed regarding the source of light being lantern and that his niece Devanti Kumari (PW 1) had identified appellant Ramadhar Singh in light of the lantern. He himself claims to have identified Binod Singh, Rana Pratap Singh and appellant Sanjay Singh in torch light. He has stated that altogether there were 20 dacoits and that the entire occurrence was committed in 45 minutes. He has disclosed that PW 2



Jhalku Rai was sleeping at his *Darwaza*, east of his house and regarding his jumping out of the house on the heap of sand. He has also stated that IO had come on the next day for his statement and that Sakaldeo Ram and Bhikhan Rai have also put their signatures. In his cross-examination, he has stated that he talked to Firangi Rai, Prem Chand Rai and Kanhaiya Rai, his nephews. He has also stated that he talked to Jhalku Rai (PW 2) but denies having talked with the women of the house. In his cross-examination, he has admitted that appellant Ramadhar Singh's land was situated near his *Darwaza*. He has denied the suggestion that he was cultivating the land of appellant Ramadhar Singh on *Batai*. He has denied the version of the defence regarding his animals put in the *Phatak* by appellant Ramadhar Singh. He has admitted that his brother Jhalku Rai (PW 2) has filed a Partition Suit against him a week or ten days prior to the occurrence. He has, however, denied that appellant Ramadhar Singh had set up PW 2 Jhalku Rai to file the Partition Suit.

15 From the deposition of the informant Bali Rai (PW 7), some vital contradictions and strong motive for false implication of appellant Ramadhar Singh has emerged. It appears admitted from the deposition of PW 7 with that of PW 2, PW 1 and PW 6 that appellant Ramadhar Singh has substantial lands adjacent to the house of the informant where the occurrence is alleged to have taken place.



The fact that the appellant Ramadhar Singh was letting out the lands for farming on *Batai* has also come in the deposition of these witnesses.

16 Evidence of PW 7, PW 1, PW 2, PW 6 shows that appellant Ramadhar Singh was having substantial lands adjacent to the house of the informant where the occurrence is alleged to have taken place and that he was having cultivation done on the lands by means of *Batai*. The appellant Ramadhar Singh is known to all members of the family of the informant (PW 7). It also emerges that the brother of informant, namely, Jhalku Rai (PW 2) had filed a Title Suit a week or ten days prior to the occurrence at the instigation of appellant Ramadhar Singh. Even though appellant Ramadhar Singh was known to all the family members, PW 3, mother of PW 1 and *Bhabhi* of the informant (PW 7) have not disclosed the name of any dacoit including appellant Ramadhar Singh. Even though the prosecution case, as narrated, is that a dacoity has been committed by altogether 20 persons in the village and that the occurrence has lasted for at least 45 minutes, it is quite surprising that PW 5, who is a co-villager, has totally denied any knowledge of the incidence. Even though, as per FIR, many persons are said to have assembled when the *Fardbayan* was being recorded, but none has been examined. The only other independent witness being PW 4 has also not supported the



occurrence as an ocular witness. PW 4 or PW 5, who are independent witnesses (co-villagers) have not disclosed the name of any dacoit. Even though the deposition of PW 1 and PW 3 alleges *Musal* blow's injury to have been inflicted upon PW 1 and PW 3 but there is no examination of any injury so as to corroborate the same. The FIR witnesses, namely Sakaldeo Rai and Bhikhan Rai have not been examined. The deposition of the prosecution witnesses are inconsistent and out of line as regards the number of dacoits who allegedly participated or committed the offence. The accused Sanjay Singh was also known to the family of the informant (PW 7) since before as is evident from deposition of PW 2, brother of the informant. He is said to be the owner of a flour mill. The means and manner of identification of the accused persons is also under a serious cloud of doubt inasmuch as neither the lantern nor the torch has been marked as Exhibits. In fact, the IO has not been examined by the prosecution at the trial. None of the articles, alleged to have been taken away, have been recovered and the deposition as regards the number of boxes, having been taken away by the dacoits, is also inconsistent. PW 3 has said that three dacoits took away three boxes, gold ornaments, cash of Rs 25,000/- whereas deposition of PW 7 and deposition of other prosecution witnesses is inconsistent. PW 7 has, in the *Fardbayan*, stated that dacoits took away eight briefcases, wooden



box and two other briefcases. However, in his deposition in Court, he has said that 7 - 10 boxes were taken away. Evidence is consistent that accused Ramadhar Singh was having lands adjacent to the house of the informant/place of occurrence. It has also come in evidence of PW 2 that accused Sanjay Singh was carrying on business of flour mill. However, PW 2 has not disclosed the name of any dacoit. PWs 4 and 5 have also not taken the name of any dacoit. Even PW 6 has not named Sanjay Singh, Appellant of Cr Appeal (SJ) 55 of 2004, and regarding Ramadhar Singh, Appellant of Cr Appeal (SJ) No 19 of 2004, he has specifically stated that he has not seen him. Thus, other than PW 7, i e, the informant, none has identified the accused persons, in spite of the fact that the informant has alleged that perpetrators of the crime had not covered their faces and that both accused, as per prosecution case, were known to all the witnesses.

17 On a careful scrutiny and consideration of the evidence, as noticed above, this Court would observe that prosecution has miserably failed in establishing its case beyond reasonable doubt. Conviction of the appellants, on basis of such vital inconsistency in prosecution case and unreliable evidence, cannot be sustained.

18 Therefore, the judgment of conviction and order of sentence dated 09.12.2003 passed by the learned Additional Sessions Judge VI, Chapra in Sessions Trial No 498 of 1994 for the offence



punishable under Section 395 of IPC is not in accordance with law.
The prosecution has failed to substantiate the charge against the
accused persons beyond all reasonable doubts.

19 Accordingly, the impugned judgment of conviction
and sentence is hereby set aside.

20 The appeals, therefore, are allowed.

21 The accused persons (appellants) are acquitted of the
charges levelled against them. They are discharged from the liability
of their bail bonds.

(Madhuresh Prasad, J)

M.E.H./-

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