

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.4 of 2013

Arising Out of PS.Case No. -76 Year- 2009 Thana -CHAKIA District- -

Ashok Prasad @ Ashok Bhagat S/o Brahmdeo Bhagat R/o Village - Lohargawan,
Police Station - Madhuban, District - East Champaran at Motihari

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

with

Criminal Appeal (SJ) No. 6 of 2013

Arising Out of PS.Case No. -76 Year- 2009 Thana -CHAKIA District- -

1. Mahadeo Bhagat S/o Late Ram Saraf Bhagat R/o Vill. - Loharganwa, P.S. Madhuban, Distt. - East Champaran
2. Birendra Manjhi S/o Girdhari Manjhi R/o Vill. - Loharganwa, P.S. Madhuban, Distt. - East Champaran
3. Manhagu Bhagat S/o Gulam Bhagat R/o Vill. - Bhangurua, P.S. Madhuban, Distt. - East Champaran
4. Dhrup Lal Manjhi S/o Late Punjabi Manjhi R/o Vill. - Konhiya, P.S. Chakia, Distt. - East Champaran

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

with

Criminal Appeal (SJ) No. 47 of 2013

Arising out of PS.Case No. -76 Year- 2009 Thana -CHAKIA District-
EASTCHAMPARAN(MOTIHARI)

Mahesh Paswan S/o Fuddi Paswan Resident of Village- Loharganwa, Police
Station- Madhuban, District- East Champaran At Motihari

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

Appearance:

(In CR. APP (SJ) No.4 of 2013)

For the Appellant/s : Dr. Amrendra Kumar, Advocate
Mr. Krishna Kant Singh, Advocate

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

(In CR. APP (SJ) No.6 of 2013)

For the Appellant/s : Dr. Amrendra Kumar, Advocate
Mr. Krishna Kant Singh, Advocate

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

(In CR. APP (SJ) No.47 of 2013)

For the Appellant/s : Dr. Amrendra Kumar, Advocate
Mr. Krishna Kant Singh, Advocate

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



CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
C.A.V. JUDGMENT
Date: 19-01-2018

The aforesaid appeals have been filed against the order of conviction dated 29.11.2012 and sentence dated 09.12.2012 passed in Sessions Trial No. 740 of 2009 by the learned 06th Additional District and Sessions Judge, Motihari (East Champaran).

2. Since the aforesaid three appeals arise out of the same Sessions Trial No. 740 of 2009 as well as out of the common impugned judgment of conviction dated 29.11.2012 and sentence dated 09.12.2012 respectively, the same have been heard together and are being disposed off by the present judgment.

3. All the appellants of the aforesaid appeals have been held guilty for the offences punishable under sections 395, 397 and 412 of the Indian Penal Code. All the appellants have been sentenced to undergo R.I. for a term of 10 years and a fine of Rs. 10,000/- for the offence under Section 395 of the Indian Penal Code and have been directed to undergo further simple imprisonment for one year in default of payment of the fine. The appellants have also been held guilty for the offence punishable under Section 397 of the Indian Penal Code and sentenced to undergo Rigorous imprisonment for 7 years. All the appellants have further been directed to undergo sentence of R.I. for a term of 10 years and a fine of Rs. 5,000/- under Section 412 of the Indian Penal Code and in default of payment of fine they have been further sentenced to undergo simple imprisonment for six months. All the sentences, except the fine, have been directed to run concurrently.

4. The short facts of the case are that on the basis of the fardbeyan of the informant, namely, Bharat Das (P.W. 7) dated 16.05.2009, recorded by the Sub Inspector of Police, Randhir Kumar Singh, at about 9:30 hours at Ram Janki



Math, Sihorava, Chakia P.S. Case No. 76 of 2009 was registered against unknown persons for the offences under Section 394 of the Indian Penal Code and subsequently by an order dated 04.06.2009 passed by the learned C.J.M., Sections 395, 397 and 412 of the Indian Penal Code were added. According to the fardbeyan of the informant, namely, Mahant Bharat Das, in the night of 15/16.05.2009 at about 1:45 in the night while he was sleeping in the Math premises, he heard some noises whereafter he woke up and he saw that some people were roaming around in the temple premises whereafter he being scared asked the said persons as to who were they, upon which the accused persons demanded keys of the temple. When the informant is said to have refused to give the keys the accused person had assaulted him resulting him in handing over the keys whereafter the accused persons committed theft of the various idols of Gods as well as theft of other articles. The informant had further stated that though he did not recognize the accused persons by name but he can recognize them when he sees them.

5. The Police had investigated the case and filed charge sheet dated 26.08.2009 under Section 394, 395, 397 and 412 of the Indian Penal Code against all the appellants herein. After completion of the supply of police papers, the case was committed to the court of sessions and the charges were framed on 15.02.2010 against all the appellants herein under Section 395, 397 and 412 of the Indian Penal Code.

6. During the course of trial, the prosecution produced nine witnesses. P.W. 1, namely, Kailash Prasad Kushwaha and P.W. 2 namely, Dhanraj Sah are the seizure list witnesses. P.W. 3 Geenish Rai, P.W. 4 Sukhdeo Pandey, P.W. 5 Rajendra Tiwari and P.W. 6, namely, Bhagya Narayan Tiwari are the co-villagers and are said to be hearsay witnesses. P.W. 7, namely, Bharat Das is the informant of the present case while P.W. 8, namely, Randhir Kumar Singh is the



Investigating Officer and P.W. 9, namely, Shambhu Kumar is the B.D.O., before whom the T.I.P. of the looted articles had taken place.

7. I have heard the learned counsel for the appellants, namely, Amrendra Kumar and Shri Krishna Kant Singh, Advocates. It has been submitted by the learned counsel for the appellants that the accused persons have not been identified by the informant who is the sole eye witness. It is next contended that the seizure list witnesses have turned hostile hence the seizure list remains uncorroborated by any independent witnesses. It is also the contention of the learned counsel for the appellants that though the informant has admitted in his evidence that the seizure was made after 2-3 days of the alleged incident, the Police has stated about recording the confessional statement of the accused persons and consequent recovery of the stolen articles after 1 days of the incident. Hence, there is a lot of discrepancy in the timing and date of recovery. Lastly, it is contended that no recovery has been made from the appellants herein.

8. Per contra, the learned Additional Public Prosecutor for the State Shri Ashok Kumar has submitted that the present case is a case of circumstantial evidence and each and every chain in the sequence of events are complete so as to prove the guilt of the accused persons. It is further submitted that even the informant is said to have identified one accused person at the Police Station and in any view of the matter, the accused persons were apprehended by the Police and upon their confessional statement recovery has been made. Hence, there is enough material on record to prove the guilt of the accused persons i.e. the appellants herein.

9. At this juncture, it would be relevant to discuss the evidence led by the prosecution. P.W. 7 is the informant of this case i.e. Bharat Das, who is also the Mahanth of the temple. This witness has stated in his evidence that the incident dates back to two years and the time was at about 2:00 P.M. in the night



when he was sleeping at the gate of the temple. At that time, 7-8 persons came there and assaulted him as well as asked for the keys of the temple and after taking the keys, the said accused persons had committed theft of various articles including the idols of the Gods. It has been further submitted by P.W. 7 that all the accused persons who are present today were also present at the Police Station when he had gone to identify the stolen articles. In paragraph no. 3 of his cross-examination, P.W. 7 has stated that after 2-3 days of the incident, he was informed that the idols have been recovered, whereafter he had gone to the place from where recovery was made. It has also been stated that subsequently he had gone to the Police Station where the accused persons had been brought after being apprehended but he had not seen the said accused persons on any previous occasion. In paragraph no. 4, P.W. 7 has stated that he has not recognized the accused persons who had committed theft.

10. P.W. 3, Geenish Rai has stated in his evidence that two years back at about 2 A.M. in the morning, upon hearing the noise of alarm being raised from the side of Ram Janki temple, he had gone there and he was told that 7-8 persons had come there and stolen the idols and other articles from the temple. In paragraph no. 2, P.W. 3 has stated that he, till date, does not know as to who had stolen the idols.

11. P.W. 4 is Sukhdeo Pandey, a co-villager, who has also stated on the lines of P.W. 3 and he has further stated in his evidence that he does not recognize any of the accused persons and he had reached at the place of occurrence after a long time.

12. P.W. 5 is Rajendra Tiwari who has also deposed on the lines of P.W. 3, however, he has stated that he was told by the Mahanth that theft has taken place in the temple, however, he has admitted that he cannot recognize the thieves and he is seeing the accused persons in the dock for the first time.



13. P.W. 6 is Bhagya Narayan Tiwari who is also a co-villager and has deposed on the lines of P.W. 3, however, he has further submitted that he does not know as to who had stolen the idols. He has further stated that the Mahanth had not taken the names of the persons who had stolen the idols.

14. P.W. 1 Kailash Prasad Kushwaha is the seizure list witness, however, he has been declared hostile by the prosecution. P.W. 1 has identified his signature on the seizure list which has been marked as Exhibit-1.

15. P.W. 2 is Dhanraj Sah who is also a seizure list witness. However, he has stated that neither any articles were recovered in his presence nor the seizure list was prepared in his presence and the fact is that the Police had taken his signature on the seizure list on the road.

16. P.W. 8, Randhir Kumar Singh is the Investigating Officer of the present case and the formal FIR has been proved by him and marked as Exhibit-3. He has identified his signature on the fardbeyan which has been marked as Exhibit-4 and he has further deposed that after he had recorded the fardbeyan of the informant, he along with the Police Party had proceeded to the place of occurrence. P.W. 8 has also deposed that he had received secret information that the accused persons were residing at house of one Dr. R.N. Singh whereafter he along with the other police personnel had conducted raid and arrested these accused persons, who had accepted their guilt and had said that they had stolen the idols. It has been further stated that thereafter recovery was made from the field where the stolen articles had been buried and then the seizure list was made in the presence of two independent witnesses, who had signed on the same. The seizure list has been proved by P.W. 8 and has been marked as Exhibit-6.

17. P.W. 9 i.e. Shambhu Kumar is the then B.D.O., Chakia and he has stated in his deposition that the Test Identification Parade of the recovered articles was conducted in his presence and the informant had identified three idols and



one bell. The T.I.P. chart has been identified by P.W. 9 and has been marked as Exhibit-7.

18. I have examined the materials on record and I find that there is only one eye witness i.e. P.W. 7 namely Bharat Das, who is the informant of this case and he has stated in his evidence that he does not recognize the persons who had committed the theft. It has been further stated by P.W. 7 that the stolen articles were recovered after 2-3 days and when he had gone to the Police Station he had seen the accused persons, however, he had not seen them earlier. It is thus apparent that the accused persons i.e. the appellants herein who were the persons apprehended by the Police and kept at the Police Station were not the same persons as those who had committed the theft in the temple for the reason that if they were the same persons then there was no occasion for the informant i.e. P.W. 7 to have not recognized the appellants herein at the Police Station inasmuch as in his fardbeyan before the Police, P.W. 7 had stated that if he sees the accused persons, who had committed the theft, he will recognize them. Moreover, the story as propounded by the Police about recovery of stolen articles after 12 days of the incident upon confessional statement made by the accused persons is also belied by the evidence adduced by P.W. 7 who has categorically stated that the recovery was made after 2-3 days of the incident, hence there is material contradictions in the police version and the statement of the P.W. 7, thus no reliance can be placed upon the statement of the I.O. i.e. P.W. 8 and the statement of the informant i.e. P.W. 7. As far as P.W. 3 to P.W. 6 are concerned, they are hearsay witnesses and they have stated that they do not have any knowledge about the persons who had committed theft and they cannot also recognize them. P.W. 1 and P.W. 2 are the seizure list witnesses but they have also not supported the seizure inasmuch as they have stated that neither the seizure was made in their presence nor the seizure list was prepared in their



presence and they had made signature on the seizure list merely at the instance of the Police, hence the factum of seizure has also not been proved beyond all reasonable doubts.

19. Upon consideration of the entire materials on record and after going through the evidences, I am of the opinion that the prosecution has failed to prove the case beyond all reasonable doubt and as such the appellants of the aforesaid three criminal appeals deserve to be given the benefit of doubt.

20. Accordingly, the judgment of conviction dated 29.11.2012 and sentence dated 09.12.2012 passed in Sessions Trial No. 740 of 2009 is hereby set aside. The appellants herein were granted bail by an order dated 14.02.2013 passed by this Court. Considering the fact that the appellants of all the aforesaid three appeals have been acquitted, they are hereby discharged from the liability of bail bonds.

21. The aforesaid appeals stand allowed.

(Mohit Kumar Shah, J)

S.Sb/-

AFR/NAFR	
CAV DATE	15.01.2018
Uploading Date	27.01.2018
Transmission Date	27.01.2018

