

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.536 of 2015

Arising out of PS. Case No. -49 Year- 2010 Thana -Madhepura District- Madhepura

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Rakesh Roshan @ Bablu Yadav, Son of Upendra Yadav Resident of
Village- Kamaljari, P.S. Gamhariya, District- Madhepura.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance:

For the Appellant/s : Mr. Dinesh Prasad Verma, Adv.
Mr. Rohit Sharma, Adv.

For the State : Mr. Sujit Kumar Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

Date: 07-08-2018

Appellant, Rakesh Roshan @ Bablu Yadav has been found guilty for an offence punishable under Section 413/34 of the IPC and sentenced to undergo R.I. for seven years as well as to pay appertaining to Rs.10,000/- in default thereof, to undergo S.I. for one year, additionally under Section 414/34 IPC and sentenced to undergo R.I. for three years with a further direction to run the sentences concurrently vide judgment of conviction dated 20.06.2015 and order of sentence dated 30.06.2015 passed by Additional District & Sessions Judge, 2nd, Madhepura in Sessions Trial No.118/2011.

2. Anil Kumar Yadavendu (PW.1), Officer-in-charge of Madhepura P.S. recorded his self-statement at the house of Dinesh Yadav on 07.02.2010 at 03:30 PM disclosing therein that after getting confidential information regarding presence of harden



criminal Babloo Yadav, son of Upendra Yadav and Manjesh Yadav, son of Dinesh Yadav at the house of Manjesh Yadav along with stolen motorcycle, a raid was conducted and during course thereof, Manjesh Yadav and Babloo Yadav succeeded in their escape while father of Manjesh Yadav, namely, Dinesh Yadav who was also attempting to flee, was apprehended on account of physical deformity and then, in presence of seizure list witnesses namely, Raj Kishore Yadav and Amlesh Kumar his house was searched wherefrom motorcycle was seized and for that, no document was produced by the Dinesh Yadav and for that, seizure list was prepared. It has also been disclosed that at an earlier occasion also raid was conducted at his house and during course of search, one motorcycle and one T.V. was seized and for that Madhepura P.S. Case No.426/2009 was registered.

3. After registration of Madhepura P.S. Case No.49/2010 investigation commenced and after concluding the same, charge sheet was submitted facilitating the trial. From the judgment impugned, it is evident that during course of trial, accused Dinesh Yadav failed to continue with his presence while his son Manjesh Yadav who was in jail at Saharsa P.S. was not being produced on account thereof, vide order dated 19.09.2014, trial of this appellant was separated and proceeded independently meeting with the ultimate result, subject matter of instant appeal.

4. Defence case as is evident from mode of cross-examination as well as statement recorded under Section 313 of the



Cr.P.C. is that of complete denial. However, nothing has been adduced in defence.

5. In order to substantiate its case prosecution had examined altogether seven PWs who are PW.1-Anil Kumar Yadavendu, PW.2-Sukan Pandit, PW.3-Mohan Mandal, PW.4-Sanjay Das, PW.5-Amlesh Kumar, PW.6-Raj Kishore Yadav, PW.7-Virendra Prasad Singh. Side by side had also exhibited Ext.1-seizure list, Ext.2-self-statement, Ext.3-formal FIR. As stated above, nothing has been adduced in defence.

6. From the evidence having been adduced on behalf of prosecution, it is evident that there happens to be no concrete, positive, conclusive in nature against the appellant because of the fact that admittedly appellant was not at all found at the house of the Dinesh from where allegedly motorcycle was recovered. Furthermore, there also happens to be absence with regard to appellant being in possession of the motorcycle, which was stolen one in the background of the fact that the house does not belong to the appellant. Apart from this, no evidence has been adduced in order to array the appellant in having his active involvement in possessing stolen property, that means to say habitual one. Even for consideration of joint possession of the stolen article there should have been positive evidence on that very score. Having paucity over the same he would not be convicted under Section 413 or 414 of the IPC more. Furthermore, it is evident that majority of witnesses have also not been able to identify the appellant in dock. That means to



say there happens to be lacking of the substantive evidence. Consequent thereupon, the judgment of conviction and sentence recorded by the learned lower court is hereby set aside. Appeal is allowed. Appellant is on bail, hence discharge from its liability.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

AFR/ NAFR	A.F.R.
CAV DATE	N.A.
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