

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.223 of 2016

Arising Out of PS.Case No. -141 Year- 2012 Thana -
DIHRINAGAR District- SASARAM (ROHTAS)

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Md. Abid, son of Mohammad Majid, resident of Village-Guraksar,
P.S.-Hathin, District-Palwal(Hariyana)

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Vikramdeo Singh, Advocate,

For the Respondent/s : Mr. Zeyaul Hoda, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT

Date: 10-05-2018

The appellant has been convicted under Sections 395 and 412 of the Indian Penal Code and has been sentenced to undergo rigorous imprisonment for seven years under both the counts and has been directed to pay a fine of Rs. 10,000/- for each of the offences and in default of payment of fine, to further undergo rigorous imprisonment for one month. The aforesaid judgment and order of conviction and sentence has been passed on 18th of May, 2015 by the learned 6th Additional District & Sessions Judge, Rohtas at Sasaram in Sessions Trial No. 429 of 2012, arising out of Dehri (Town) P.S. Case No. 141 of 2012.

2. The case of the prosecution is based on the fardbeyan statement of Sudama Chandra Bind (P.W. 3), who has lodged the aforesaid F.I.R alleging that while he along with his cleaner viz. Uma Kant Yadav (P.W. 1) was going to Sasaram



from Patna after unloading his truck, he halted for a while as it had become late in the night. It has been alleged that thereafter, at about 2:30 A.M. in the morning, about seven miscreants came on a vehicle and made another truck driver viz. Shivshankar Yadav (P.W. 2) board the truck in which the informant/P.W. 3 was sleeping along with P.W. 2. Thereafter, on gun point, the informant was divested of his personal belongings and Rs. 10,000/- which he was carrying in his pocket. An amount of Rs. 35,000/- which was kept in the cabin of the truck was also taken away. Thereafter, the truck was taken to some unknown place and at that place, the informant and two others viz. P.W.s 1 and 2 were made to get down from the truck. After untying themselves, the informant and his associates lodged the F.I.R. On the basis of the aforesaid statement made by P.W. 3, Dehri (Town) P.S. Case No. 141 of 2012 dated 31.03.2012 was registered for investigation under Section 395 I.P.C against unknown.

3. The appellant was arrested with one of the looted trucks shortly thereafter. The driving license of the informant/P.W. 3 and the money which is said to have been looted was also found in the truck which was being driven by the appellant.

4. The police, after investigation submitted charge-sheet, whereupon cognizance was taken and the case was



committed to the Court of Sessions for trial.

5. The Trial Court, after examining five witnesses on behalf of the prosecution, convicted and sentenced the appellant as aforesaid.

6. Uma Kant Yadav (P.W. 1) is the cleaner of the truck who has supported the prosecution version and has stated that in the night intervening between 30/31-03-2012, while he along with P.W. 3 was sleeping inside the cabin of the looted truck, the miscreants, about seven in number, entered the cabin and on gun point snatched all belongings of the aforesaid two persons and took the truck to some unknown place. He along with others was made to get down from the truck. He has identified the appellant during the Test Identification Parade as also in the Court.

7. Shivshankar Yadav (P.W. 2) who also was one of the persons who was abducted for some time by the miscreants has supported the prosecution version. He has supported the case of the prosecution that he was made to board the looted truck and was divested of Rs. 7500/- which he was carrying. The truck which was being driven by him was also taken away by the miscreants.

8. However, the aforesaid witness has not identified the appellant in the Test Identification Parade. He also did not identify the appellant in Court.



9. The informant Sudama Chandra Bind has been examined as P.W. 3. Not only has he identified the appellant in the dock but has also supported the prosecution version in all its details.

10. The Test Identification Parade was conducted by the Satya Prasad Maurya, learned Judicial Magistrate, who has been examined as P.W. 4. He has identified and proved Ext-2 which is the Test Identification Parade Chart. From the perusal of the Test Identification Parade Chart (Ext-2), it appears that the Test Identification Parade was conducted in a proper manner. Both, P.W. 1 and P.W. 3 have identified the appellant as one of the members of the mob which had ransacked two trucks and had taken away both the trucks to some unknown destination.

11. The Investigation Officer, Ramesh Kumar Singh has been examined as P.W. 5. He has deposed that he took up the investigation of the case on 06.05.2012. He also submitted the charge-sheet against the appellant. He has proved Ext-3 and Ext-1/A.

12. Mr. Vikramdeo Singh, learned advocate appearing for the appellant has submitted that the conviction of the appellant is not justified in as much as the means of identification has not been disclosed by either P.W.s 1 or 3. In the F.I.R also, no physical description of the miscreants had been given by the informant and only a rough assessment of the



age of the miscreants was given. It has further been submitted that the identification of the appellant by P.W. 3 cannot be accepted as valid piece of evidence as according to P.W. 3 himself, he had seen the appellant in the police lock-up. In para 8 of his cross-examination, P.W. 3 has admitted that he came to learn that one accused person was arrested in the case. He went to the Police Station and saw him in police lock-up. That person only was identified by him in the Test Identification Parade in jail. It has secondly been argued that Shivshankar Yadav/P.W. 2 never attended the Test Identification Parade and did not identify the appellant in Court. He was all along with P.Ws. 1 and 3 and therefore his not identifying the appellant in dock raises doubt about the truthfulness of the version of P.W.s 1 and 3. It has also been submitted that the manner in which the appellant was identified also does not clarify as to what role was being played by him. Lastly, it has been argued that the appellant was arrested on mistaken identity. He is a person hailing from Haryana and has wrongly been made accused in this case.

13. From the perusal of the evidence on record, it becomes very clear that the truck which was looted was shortly intercepted at a toll booth by the police. The appellant was found driving the aforesaid vehicle. From inside the vehicle which was seized, the personal belongings of P.Ws. 1, 2 and 3 including cash amount was recovered. There is no explanation on behalf of



the appellant as to how he was found in the looted truck and that also immediately after the occurrence of looting. He has been identified by the P.W.s 1 and 3 as part of the mob.

14. True it is that the Test Identification Parade Chart (Ext-2) does not reveal as to what role was played by the appellant but regard being had to the fact that he was found driving the looted truck, it was rightly held by the Trial Court that he had participated in the dacoity and was found with the stolen property, thereby making himself liable for prosecution and conviction under Section 395 and 412 of the Indian Penal Code. Non-examination of any independent witness or Investigating Officer who had actually first investigated the case has not caused any prejudice to the appellant. Hence, non-examination of the aforesaid two persons cannot be said to have vitiated the trial. The recovery of the looted articles and the appellant being found with the truck which was looted, is good enough evidence for conviction of the appellant under Section 395 and 412 of the Indian Penal Code. The P.W.s 1 and 3 have fully supported the prosecution version.

15. Under such circumstances, this Court finds no reason to interfere with the judgment of conviction.

16. This Court has been informed that the appellant has remained in jail for more than six years by now.

17. Considering the nature of accusation and the fact



that the appellant has faced trial for all these years since 2012, this Court is of the view that the interest of justice would be sufficiently met, if the sentence of the appellant is reduced to the period of custody which he has already undergone.

18. The sentence of the appellant is modified and reduced accordingly.

19. In the result, though the appeal fails but the sentence of the appellant is reduced to the period of custody which he has already undergone.

20. The appellant is therefore directed to be released from jail forthwith, if not wanted in any other case.

21. Let a copy of the judgment be transmitted to the Superintendent of concerned Jail for compliance and needful action.

(Ashutosh Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	17/05/2018
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