

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.413 of 2015

Arising Out of PS.Case No. -226 Year- 2011 Thana -SITAMARHI COMPLAINT CASE District -
SITAMARHI

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Lalan Jha S/o Late Suresh Jha Resident of Village Bangaon, P.S. Bajpatti, District
Sitamarhi.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance:

For the Appellant/s : Mr. Anil Kumar, Adv.

For the Respondent/s : Smt. Abha Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 26-04-2018

Appellant, Lalan Jha has been found guilty for an offence punishable under Section 395 read with Section 120B of IPC has been sentenced to undergo R.I for 10 years as well as to pay fine appertaining to Rs.25,000/- and in default thereof, to undergo R.I for one year vide judgment of conviction dated 24.06.2015 and order of sentence dated 27.06.2015 passed by Second Additional Sessions Judge, Sitamarhi in Sessions Trial No.413/2012.

2. Before stepping forward, salient feature visualizing from the lower court record is to be taken note of, firstly. At an earlier occasion Baspatti P.S. Case No.46/2010 was registered on the fardbeyan of Shambhu Nath Jha against appellant and others (since acquitted) wherein the police after concluding investigation submitted final report which was accepted but, on the protest petition which was filed during intermediary period converted as complaint petition, bearing Complaint Case No.226/2011 wherein, after examining the complainant Shambhu Nath Jha on S.A. as well



as examining the witnesses during course of an inquiry under Section 202 of the Cr.P.C the learned lower court had summoned the appellant along with others in accordance with Section 204 of the Cr.P.C after whose appearance, the case has been committed, trial was conducted concluded, in a manner, subject matter of instant appeal.

3. PW.4, Shambhu Nath Jha alleged in the complaint petition that in between night of 17/18-04-2010 at about 01:05 AM while he along with his wife Poonam (PW.2) was sleeping, dacoits intruded inside his house after scaling, broken the door, came inside the room assaulted him and then, looted away their belongings after breaking the almirah. It has also been incorporated that dacoits have concealed their face by *Galmocha*. It has also been disclosed that one dacoit who had concealed his face by *Galmocha* and was saying to hurry up, was identified by him as well as his wife in lantern as well as torch light to be their co-villager, Lalan Jha. Then thereafter, the dacoits made them captive, took them to the “Ikri field” where some of the dacoits parted with, gone to the house of Kashinath Jha where also committed dacoity. During midst thereof, police arrived, as a result of which, the dacoits after leaving them, escaped away. It has also been disclosed that dacoits have exploded bomb while committing dacoity at the house of Kashinath Jha.

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. Furthermore, it has been pleaded that on account of long standing animosity amongst the parties, he



has purposely been named. In order to substantiate the same, the defence had also exhibited some documents by way of examining one DW.

5. In order to substantiate its case prosecution had examined altogether ten PWs. PW.1-Parmanand Jha, PW.2-Poonam Devi, PW.3-Shatrughan Rai, PW.4-Shambhu Nath Jha, PW.5-Ram Kailash Rai, PW.6-Rajesh Kumar, PW.7-Kashikant Jha, PW.8-Ram Niwas Ram, PW.9-Sujeet Kumar Jha, PW.10-Raman Prasad. Side by side had also exhibited Ext.1-Signature of PW.4 over fardbeyan, Ext.1/1-Signature of police official (A.N. Singh) over fardbeyan, Ext.1/2-endorsement over the fardbeyan, Ext.1/3-Formal FIR, Ext.2-Signature of PW.4 over protest petition, Ext.2/1-Signature of Indrakant Choudhary over protest petition, Ext.3-An information tendered by the police officials in pursuance of right to information act. On the other hand, the defence had examined one DW Raman Prasad and exhibited Ext.A-Formal FIR of Bajpatti P.S. Case No.33/2002, Ext.B-fardbeyan, Ext.B/1-Endorsement, Ext.C-Charge sheet, Ext.D-Final report relating to Bajpatti P.S. Case No.46/2017.

6. PW.1 is the cousin brother of the PW.4 however, separate in mess and business. He had deposed that on the alleged date and time of occurrence, he was sleeping near about his house. At that very time, Guddu came and disclosed that dacoit have raided house of Shambhu Nath Jha. Also disclosed that some of the dacoits have also gone to his house. Though, he has got gun but he had not used the same and instead thereof, informed the police. After arrival of the police, he had gone to the house of Shambhu Nath Jha. At



that very time, Shambhu Nath Jha was giving his fardbeyan. Whatever he had deposed is based upon what he conceived during course of fardbeyan having been given by the informant and during course thereof, he had also stated that informant had claimed identification against Shambhu Nath Jha. He had also disclosed that in the evening hour Jagarnath Thakur and Satyan Narayan Thakur were loitering near about his house. He had also stated that at an earlier occasion Lalan Jha had threatened that Shambhu Nath Jha will be given a lesson whereupon, he pacified Shambhu Nath Jha. Identified the same. During cross-examination at para-2 he had disclosed that complainant happens to be his cousin brother. Then had shown ignorance with regard to pendency of cases amongst them. He had further stated that Lalan Jha happens to be aged about 62, 63 years. In para-3, he had stated that he had not come across names of dacoits during course of commission of dacoity. Then thereafter, there happens to be cross-examination relating to activity, as well as his previous statement whatever been before the police. In para-8, he had stated that he had not seen the occurrence. Then had denied the suggestion that as he is cousin brother of Shambhu Nath Jha so had deposed falsely.

7. PW.3, though during course of examination-in-chief had substantiated the occurrence but, had not named nor identified the appellant in dock. PW.5 is a formal witness, an advocate clerk who had exhibited the fardbeyan, formal FIR. PW.6 is another formal witness who had exhibited the protest petition. He had also exhibited the information having been supplied by the P.S. concerned under



Right to Information Act relating to criminal antecedent of the appellant.

8. PW.7 is the Kashinath Jha, at whose house dacoits have also raided, exploded bomb but, he had not named nor claimed identification of any of the dacoit nay he claimed that Shambhu Nath Jha had disclosed him regarding identification of any of the dacoits.

9. PW.8 is another witness who had substantiated the occurrence but, he had not stated whether complainant Shambhu Nath Jha had disclosed regarding identification of the appellant as one of the dacoit.

10. PW.9 had completely disowned the occurrence.

11. Now remains the evidence of PW.2 as well as PW.4 are spouses as well as to be victim. Before coming to their evidence, it is apparent from the evidence of the witnesses that during examination-in-chief as well as cross-examination they treated it as a police case though, after acceptance of final report, the case proceeded on the basis of protest-cum-complaint petition.

12. PW.2 had stated that on the alleged date and time of occurrence while she was sleeping in a room along with her husband, dacoits began to hammer upon door of the room on account thereof, she opened the same. Six dacoits intruded inside the room out of whom she identified Lalan Jha in the lantern light. All were armed with firearm. Then thereafter, they looted away their belongings, ornaments, cash appertaining to Rs.3,80,000/- after breaking the almirah. They have also gone to the room of her



daughter-in-law were they also broken the almirah and took away different articles. Her husband was brutally assaulted. Then thereafter, dacoits pounced upon her neighbour Kashinath Jha and also committed dacoity there. She had made statement before the police as well as in court also. She had also stated that she had seen 4-5 persons loitering around her house in the evening. Claimed identification. In para-2, para-3 there happens to be contradiction relating to her previous statement made before the police. In likewise manner she was also cross-examined whether she had shown lantern to the Investigating Officer, broken almirah to the Investigating Officer. In para-4 she had stated that the dacoits who carried them to Kharhi were not identified by them as they had concealed their face by putting *Galmocha*. In para-5 there happens to be disclosure regarding person having their houses in the boundary. In para-6, she had stated that those persons came after occurrence. Police arrived soon after the occurrence. Lalan Jha was taken away by the police but was released after 48 hours. In para-7, she had stated that there was no dealing of money with Lalan Jha. But, she had further disclosed that her husband had given money to Lalan Jha at the time of death of his mother. She had further admitted that Lalan Jha and her husband are litigating since before.

13. PW.4 is the complainant/informant. He had deposed that on the alleged date and time of occurrence, he was sleeping with his wife. After hearing some sound her wife woke up till then, door of the room was broken away. Dacoits came inside the room having torch in their hands. They were also armed with lethal weapon. They



demanding key, on the other hand, the other dacoits broken lock of almirah, took away ornaments, cash appertaining to Rs.3, 80,000/-. They have also gone to the room of his daughter-in-law, broken the almirah, took away belongings. During course thereof, he along with his wife have identified Lalan Jha in lantern as well as torch light. He began to raise alarm, over which he was brutally assaulted. Then, thereafter, dacoits have also raided house of Kashinath Jha. Dacoits also took them away to Ikri field. At that very moment, there was flash of light over which dacoits escaped away. That was the police jeep. In spite of their cry, police did not pay heed to it and gone away. Subsequently thereafter, another jeep came wherefrom the Dy. Superintendent of Police and other police officials got down, inspected the house gone over the roof. Then had stated that on the same day Jagarnath Thakur and Satya Narayan Thakur in company of 3-4 persons have passed through his house and was giving some sort of signal. It has further been disclosed that on 17.10.2009 that means to say prior to the occurrence Lalan Jha leading a mob consistent of 60-65 persons associated with CPI(ML) came at his house and created commotion. It has also been disclosed that Lalan Jha was arrested on 18-04-2010 itself and was taken to police station but, the members of the CPI(ML) pressurize as a result of which, Lalan Jha was released. It has also been stated that on 25-02-2010 Lalan Jha had threatened Satrudhan Rai to kill in case he is going to depose. They all are associated with CPI(ML). Identified the accused. During cross-examination at para-2 he had stated that he did not know whether Lalan Jha had instituted a case against him but he had admitted presence of a case instituted by Rajeshwar



Thakur against him, his wife and children bearing Bajpatti P.S. Case No.107/2009 wherein Lalan Jha, Satya Narayan Thakur stood as a witness. At para-3 he had stated that dacoits have intruded inside his room wherein he along with his wife was sleeping. Dacoits have concealed their face by means of Galmocha. In para-4 he had stated that dacoits have stayed in his room for about ten minutes during midst thereof, they broken almirah by means of axe and then took out ornaments, cash. Then at para-5 he had stated he had shown latest, torch to the police, but is unable to say why not it was seized by the police. In likewise manner paragraph 6 happens to be relating to his statement before the police. In para-7 he had stated that he was not engaged in deal with Lalan Jha but, he had prepared a document in his pen with regard to ornaments. He had not taken any step against the accused before institution of the instant case. Again there happens to be cross-examination with regard to his previous statement before the police. At para-9 he had stated that the house of the Lalan Jha happens to be at a distance of 500 mt. Then had denied the suggestion that due to animosity, instant case has been filed.

14. Through the DW.1 the defence had exhibited certain documents with regard to pendency of cases amongst the parties prior to institution of this case.

15. After going through the evidences available on the record, it is evident that PW.2 as well as PW.4 were inconsistent over status of dacoits as, PW.2 had stated that the dacoits who took them to Kharhi have concealed their face by *Galmocha*, but was silent



concerning who came inside the room, while PW.4 had stated that all the dacoits, who came inside had concealed their face by *Galmocha*. That means to say, there should have been positive evidence at the end of the prosecution that the appellant, at the time of commission of dacoity either had concealed his face by means of *Galmocha* or his face was opened that has got relevancy in the background of Ext.2, complaint petition wherein it has specifically been incorporated that the dacoits who was standing near godrej almirah had concealed his face by *Galmocha* were wearing *Lungi* of *Gauraiya* colour, and *Ganji* and was speaking to hurry up, was identified by him as well as his wife to be Lalan Jha which, during course of evidence of PW.2 had not spoken rather she had stated that this dacoit who came inside the room out of whom one was identified to be Lalan Jha without specifying whether he had concealed his face by means of *Galmocha* whether there was utterance at the end of the appellant to hurry up on the other hand PW.4, had spoken that all the dacoits have concealed their face by means of *Galmocha* and further one of the dacoits who was standing near almirah was identified in torch and lantern light but gave up to depose that at the time of commission of dacoity he was saying hurry up over which, was identified and had uttered hurry up hurry up. That means to say, the manner of identification, as per initial version is found duly deflected during course of trial and so, in the background of long standing animosity amongst the parties is found a ground to derecognize the event of identification of appellant as one of the dacoits.

16. Consequent thereupon, the judgment of conviction and



sentence recorded by the learned lower court is set aside. Appeal is allowed. Appellant is on bail, hence is discharged from its liability.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	30.04.2018
Transmission Date	30.04.2018

