

IN THE HIGH COURT OF JUDICATURE AT PATNA**Criminal Appeal (SJ) No.366 of 2015**

Arising Out of PS.Case No. -162 Year- 2004 Thana -BUXAR District- BUXAR

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Anwar Ali @ Anwar Miya @ Guddu @ Siddu, son of Asgar Ali, resident of Mohalla - Gajadharganj, P.S. Buxar (T), District and Town - Buxar

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Anil Kumar Roy-Advocate

For the Respondent/s : Mr. Binod Bihari Singh-A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT**Date: 31-07-2018**

Appellant Anwar Ali @ Anwar Miya @ Guddu @

Siddu along with four others had faced trial for an offence punishable under Section 399 and 402 of the I.P.C. and Section 27 of the Arms Act and after conduction of the trial, all of them found guilty for an offence punishable under Section 402 of the I.P.C. while Hanuman Chaudhary, Sanjay Raut, Vikash Kumar Mishra and Gopal Kumar @ Adarsh Kumar further been found guilty under Section 27 of the Arms Act vide judgment of conviction dated 13.05.2015 passed by the 4th Additional Sessions Judge, Buxar in Sessions Trial No.142 of 2005/222 of 2006 and subsequently thereof, as is evident, while hearing over sentence, vide order of sentence dated 16.05.2015, one of the convict namely Vikash Kumar Mishra and vide order dated



18.05.2015, the another convict Adarsh Kumar @ Gopal Kumar were transmitted to the Juvenile Justice Board, on a plea having raised on their behalf to be Juvenile at the time of commission of the occurrence and then, vide order dated 29.05.2015, appellant along with Sanjay Raut and Hanuman Chaudhary have been directed to undergo R.I. for three years under Section 402 I.P.C. while Sanjay Raut and Hanuman Chaudhary also been directed to undergo S.I. for three years under Section 27 of the Arms Act with a further direction to run the sentences concurrently. It is evident that office could not be able to locate whether other convicts have challenged the judgment impugned or not.

2. Imtiyaz Ahmad Khan (PW-4), Officer-in-Charge of Buxar Town Police Station along with other officials while were on night patrolling, they have seen assemblage of some persons at a lonely place of Kila Maidan where they had gone and cordoned. During course thereof, others managed to escape while Vikash Kumar Mishra, Gopal Kumar @ Adarsh Kumar, Hanuman Chaudhary and Sanjay Raut were apprehended, who were searched out and during course thereof, a loaded pistol was recovered from the possession of Vikash Kumar Mishra, knife, from the possession of Gopal Kumar, a live cartridge, from the possession of Hanuman Chaudhary and Sanjay Raut respectively and for that, seizure list was prepared in



presence of Ishwar Prasad (PW-7) and Sidhnath Tiwari. It has also been disclosed that on interrogation, Vikash Kumar Mishra disclosed the names of his associate, who managed to their escape as Munna Chamar, Raju, Anwar @ Guddu, Mantu.

3. Accordingly, on the self-statement of PW-4, Buxar Town P.S. Case No.162 of 2004 was registered followed with an investigation as well as submission of chargesheet facilitating trial, meeting with the ultimate result, the 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. Two DWs have also been adduced in their defence.

5. In order to substantiate its case, prosecution had examined altogether seven PWs, who are PW-1, Virendra Kumar Prasad, PW-2, Sakaldeo Paswan, PW-3, Umesh Kumar, PW-4, Imtiyaz Ahmad Khan, PW-5, Ramraj Sharma, PW-6, Madan Pandey and PW-7, Ishwar Prasad as well as had also exhibited as Exhibit-1, signature of PW-3/ Sergeant Major over his report, Exhibit-2, signature of informant over self-statement, Exhibit-3, sanction order, Exhibit-4, signature of PW-7 over seizure list and Exhibit-5, confidential information. Side by side, had also exhibited the material exhibit as Exhibit-1, countrymade pistol, Exhibit-2, cartridges,



Exhibit-3, knife. In likewise manner, two DWS have also been examined at the end of the defence, who are DW-1, Murli Ram and DW-2, Rakesh Kumar Rai.

6. Heard learned counsel for the appellant as well as learned Additional Public Prosecutor.

7. Gone through the judgment impugned. Admittedly appellant was not arrested at the spot. His name cropped up on account of inculpatory extra-judicial confessional statement of Vikash Kumar Mishra before the police and the same happens to be inadmissible in the eye of law as provided under Section 25 of the Evidence Act. From the evidence of the witnesses, it is apparent that save and except, the aforesaid piece of evidence, nothing substantial has been adduced to connect the appellant with the alleged crime nor there happens to be any kind of positive evidence suggesting his presence at the time of alleged occurrence. Apart from this, when the judgment impugned has been gone through, it is apparent that learned lower Court at an initial stage had tried to pick up the legal ingredients to justify application of Section 399, 402 of the I.P.C., but later on, the learned lower Court missed crux that means to say, the assemblage should be for the purpose of commission of dacoity so far, Section 402 of the I.P.C. is concerned and for that, the prosecution was under obligation to bring on record by positive evidence that the assemblage



was for the purpose of commission of dacoity. Assemblage at a particular place may be for so many reasons, may be in utter violation of law, but unless and until, there happens to be positive evidence attracting the assemblage to be for the purpose of dacoity, the accused cannot be convicted.

8. Considering the evidence available on the record, it is quite clear that irrespective of presence of accused persons at the spot, prosecution could not be able to satisfy that the aforesaid assemblage was for the purpose of commission of dacoity and that being so, the judgment of conviction and order of sentence recorded against the appellant will automatically fail. Accordingly, judgment impugned so far appellant is concerned, is set aside. Appeal is allowed. Appellant is on bail, hence is discharged from its liability.

(Aditya Kumar Trivedi, J)

Vikash/-

AFR/NAFR	A.F.R.
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