

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.73 of 2009

Binod Kumar Agarwal sonof Kashi Nath Agarwal, Resident of Sugauli Bazar,
P.O.& P.S. Sugauli, Dist. Motihari.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Y. V.Giri, Sr. Advocate with Mr. Vikas Ratan
Bharti, Advocate.

For the State : Dr. Rabindra Kumar APP

CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA
ORAL JUDGMENT

Date : 10-09-2018

This appeal has been preferred against the judgment of conviction dated 18.11.2008 and order of sentence dated 23.12.2008 passed by the Additional Sessions Judge, Fast Track Court –V, Motihari in Sessions Trial no. 63 of 2008/4 of 2008, arising out of Sugauli P.S. case no. 7 of 1990, whereby sole appellant has been convicted under Section 394 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for five years.

Heard learned counsel for the appellant and learned counsel for the State.

The prosecution case, in brief, as contained in the fardbeyan of informant Bir Bahadur Sahani, recorded on 30.1.1990 in the evening at 7 pm at Sugauli P.S., is that he along with Kashi Nath Khandelwal, who was owner of the shop,



were going together in the evening to their houses. He had asked the informant to accompany him as he was carrying Rs. 12,000/- cash in a green colour bag. When they reached the road leading towards their house, two persons came out and caught hold of them and started to take away the bag containing the cash. The informant raised *hulla* then one person, who had knife in his hand, threatened the informant and also assaulted Kashi Nath Khandelwal near the ear causing injury. Both the informant and Kashi Nath Khandelwal fell down. The informant recognized Binod Kumar Agarwal and Kamruddin Mian and was unable to identify others. All the four criminals fled away towards West. The informant raised *hulla* on which Jagdish Khandelwal, Ram Kumar Modi, Ramchandra Pd. and others arrived and followed the fleeing criminals. The informant and injured Kashinath Khandelwal were taken to doctor with the help of some persons. The informant learnt during treatment that one person was lying injured near the house of Makbul Mian. It is further alleged that Binod Kumar Agarwal and Kamaruddin Mian along with two other unknown persons have committed the occurrence.

During trial altogether twelve witnesses have been examined by the prosecution.



Learned counsel for the appellant has submitted that besides the informant there is no eye witness. The informant himself has stated in his evidence that he could identify only one criminal, namely, Kamaruddin Mian. He could not identify other criminal at the place of occurrence. The other witnesses are hearsay witnesses.

Lower Court Records has been received.

From perusal of the Lower Court Records, it appears that 12 prosecution witnesses have been examined in this case. Out of them PWs 1,10, 11 and 12 have been declared hostile by the prosecution. PWs 2,3,4,5 8 and 9 are all hearsay witnesses. They have stated that they have come at the place of occurrence on hearing hulla. Injured Kashi Nath Khandelwal has not been examined by the prosecution. The informant has been examined as PW-6. This witness, during his evidence, has specifically stated in paragraph no.3 of his deposition that he could identify one criminal, namely, Kamaruddin Mian at the time of occurrence. He could not identify the other criminals at the place of occurrence. Both of them have fled away with bag.

In this manner, on the basis of evidence of this witness this Court does not find any cogent and reliable evidence against this appellant.



Therefore, this Court finds that prosecution has failed to prove the charge beyond all reasonable doubt.

Accordingly, the impugned judgment of conviction dated 18.11. 2008 and order of sentence dated 23.12.2008 passed by the Additional Sessions Judge Fast Track Court –V, Motihari in Sessions Trial no. 63 of 2008/ 4 of 2008 arising out of Sugauli P.S. case no. 7 of 1990, is hereby set aside. The appellant is acquitted of the charge(s) levelled against him. He is discharged from the liability of his bail bonds.

This Criminal Appeal is, accordingly, allowed.

(Sanjay Priya, J)

shyambihari/-

AFR/AFR	AFR
CAV DATE	N/A
Uploading Date	18.9.2018
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