

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.2532 of 2017

Arising Out of PS.Case No. -174 Year- 2012 Thana -
UDWANTNAGAR District- BHOJPUR

=====

Jaglal Nut Son of Dasarath Nut Resident of Vill- Belwaniya, P.S.-
Bihiya, Distt. - Bhojpur.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

with

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Criminal Appeal (SJ) No. 2695 of 2017

Arising Out of PS.Case No. -174 Year- 2012 Thana -
UDWANTNAGAR District- BHOJPUR

=====

Kanhya Nut, Son of Late Munna Nut, Resident of Vill.- Barhmpur,
P.S.- Barhmpur, Dist.- Buxar.

.... Appellant/s

Versus

The State of Bihar.

.... Respondent/s

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Appearance :

(In CR. APP (SJ) No.2532 of 2017)

For the Appellant/s : Mr. Rajni Ranjan Prasad Singh, Adv.

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

(In CR. APP (SJ) No.2695 of 2017)

For the Appellant/s : Mr. Rajni Ranjan Prasad Singh, Adv

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

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT

Date: 11-07-2018

Both the appeals have been heard together and are



being disposed of by a common judgment.

2. The appellants have been convicted under Section 395 of the Indian Penal Code by judgment dated 19.06.2017 passed by the learned Additional District & Sessions Judge, VI, Bhojpur at Ara in Sessions Trial No. 347 of 2013 and by order dated 23.06.2017, they have been sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs. 5000/- each and in default of payment of fine, they have further been directed to suffer simple imprisonment for three months.

3. The appellants have been tried for committing the dacoity in the house of Sunil Yadav/informant/P.W. 8 in the night of 25th of August, 2012.

4. The F.I.R has been lodged by the aforesaid Sunil Yadav/P.W. 8 who has alleged that on 25.08.2012, while he was sleeping in his house, he heard some noise. Later, from his rooftop, he saw that some persons were trying to scale over the northern side of the wall. The informant/P.W. 8 shouted for help. In the meantime, about 10-12 persons were spotted near his house. Two of the miscreants came from the main entrance on the rooftop and captured the inmates of the house. Thereafter, keys of the house was forcibly taken from his aunt. The miscreants opened the gate of the rooms and



took away the belongings. While fleeing away, they also resorted to firing.

5. In the F.I.R, it has been stated by the informant that he did not identify anybody. On hulla, many persons of the village had also arrived. On information having been provided, the Police came to Gajrajganj village and the F.I.R was lodged.

6. On the basis of the aforesaid statement of P.W. 8, a case vide Udwanthnagar P.S. Case No. 174 of 2012 was instituted for investigation under Section 395 of the Indian Penal Code on 27.08.2012. After investigation, the Police submitted charge-sheet against five of the accused persons including the appellants and the investigation with respect to the others was kept pending. After cognizance in the matter, the case was committed to the Courts of Sessions for trial.

7. The learned Trial Court, after examining nine witnesses on behalf of the prosecution and none on behalf of the defence, convicted and sentenced the appellants as aforesaid.

8. Satrudhan Yadav/P.W. 1 has supported the prosecution version and has stated that on the day of the occurrence, there was a dacoity in the house of one Sita Ram Yadav. On hearing hulla, he visited the house of Sita Ram



Yadav and found that ten accused persons were exiting while firing from their weapons. He could identify one tall person in the light of the torch. He identified appellant/Jaglal Nut in the Court. However, during cross examination, the aforesaid witness has admitted that the torch which was used by him for identifying appellant/Jaglal Nut was not handed over to the Police. He had also not told the Police Officer in his statement under Section 161 Cr.P.C that he had identified one tall person in the torch light. He has also stated that after the miscreants ran away, then only he arrived at the house of Sita Ram Yadav. All the miscreants had covered their faces. The person who has been identified in the dock, was not put on Test Identification Parade in his presence.

9. From his evidence, it becomes very clear that he did not identify appellant/Kanhaiya Nut. So far as the identification of appellant/Jaglal Nut is concerned, that also appears to be doubtful in as much as he never spoke before the Investigating Officer that he had identified somebody in the torch light.

10. Sanjay Kumar/P.W. 2 is a witness to the seizure who has testified to the fact that two sarees were recovered from the hut of appellant/Jaglal Nut. He has proved the seizure list which was signed by him. In cross-examination, he has admitted that such kind of sarees are



available in the market. From his evidence, the participation of the appellants in the crime has not been proved. Only the recovery of two sarees from the house of one of the appellants has been proved by the aforesaid witness.

11. Another seizure list witness viz. Munna Kumar, who has been examined as P.W. 3, has not stated anything worth any consequence. He has only testified to the fact that he had signed on the seizure list along with Shatrughan Yadav which is Exhibit 3.

12. Sanjharo Devi/P.W. 4 is the person who had given the keys to the accused persons. She, though, claims to have identified the appellants but has admitted in cross-examination that she never disclosed before the Police that she had identified the aforesaid two appellants in the light of the torch. Her identification of the appellants, therefore, does not appear to be reliable and thus her deposition is of no consequence for appreciating the prosecution case.

13. Gita Devi/P.W. 5 has only identified one of the sarees of the red colour to be the looted property. She had also deposed for the first time in Court. Similar statement has been made by Rajdev Yadav/P.W. 7

14. The depositions of the aforesaid witnesses do not bring home the charges under Section 395 of the Indian



Penal Code as against the appellants.

15. Now it is to be seen what the informant has deposed before the Trial Court. While supporting the prosecution version, he has reiterated that he saw somebody scaling over the boundary wall. On his shout for help, two of the miscreants came near him and put him in fear of being killed by pointing a weapon towards him. He was caught hold of by one person and another accused went to his aunt (P.W. 4) and asked for keys from her. Thereafter, dacoity was committed. He has identified the appellants in the Court. He has also clarified that the appellants only had come near him on the rooftop in the first instance. However, in his cross-examination, he has only admitted of having identified the appellant/Jaglal Nut in the Test Identification Parade. In the dock, though he identified the appellants but was not in a position to know or tell the names of the aforesaid appellants.

16. Thus, from his deposition, it becomes very clear that he had identified appellant/Kanhaiya Nut for the first time in the Court. In the Test Identification Parade, he had only identified appellant/Jaglal Nut.

17. The Investigating Officer of this case viz. Ravindra Kumar has been examined as P.W. 9. In his cross-examination, the aforesaid witness has categorically stated



that none of the witnesses claimed to have identified anyone of the miscreants. Nobody had told him that in the light of the torch, the accused persons were identified.

18. Mr. Rajni Ranjan Prasad Singh, learned counsel for the appellants has therefore submitted that the appellants have falsely been implicated in this case because of the village rivalry and the charges against them are totally unfounded. The depositions of the witnesses are also different from the material particulars and even the identification of the appellants by the witnesses appear to be absolutely doubtful.

19. The name of the appellant/Kanhaiya Nut had come on the confession of the co-accused which was not an acceptable piece of evidence. Apart from this, it has also been argued by him that almost all the witnesses are related to the informant and only therefore they have supported the prosecution version. The torch which was used for identifying the appellants has not been seized nor produced before the Trial Court. The looted articles which is said to have been recovered from the house of the appellant/Jaglal Nut are articles of common use which are readily available in the market. In the absence of any identifying mark, it could not have been said that only the looted saree was recovered from



the house of appellant/Jaglal Nut.

20. From the perusal of the evidence on record, it becomes very clear that so far as appellant/Kanhaiya Nut is concerned, there is no evidence against him. His identification by P.W. 8 appears to be highly doubtful. He was not identified by aforesaid P.W. 8 in the Test Identification Parade. The other witnesses have also not identified him in the dock. P.W. 4, the aunt of the informant, though claims to have identified both the appellants but she had not spoken about this to the Investigating Officer in her 161 Cr.P.C statement about which the attention has been drawn and the aforesaid fact has been confirmed by the evidence of P.W. 9.

21. So far as the appellant/Jaglal Nut is concerned, he was identified by P.W. 8 in the Test Identification Parade and was also identified in the dock. There is recovery of looted sarees from his house which has been proved by some of the witnesses.

22. Considering the aforesaid facts, the conviction of appellant/Jaglal Nut (Cr. Appeal No. 2532/2017) is upheld and affirmed.

23. Finding no cogent evidence against appellant/Kanhaiya Nut (Cr. Appeal No. 2695/2017), the conviction recorded against him is set aside.



24. His appeal succeeds.

25. So far as the sentence of appellant/Jaglal Nut concerned, learned counsel for the appellants has submitted that he has faced trial in right earnest and is in custody for about six years by now. The appellant has to feed so many persons and in his absence, his family is almost on the brink of starvation.

26. Considering the aforesaid facts, this Court is of the view that interest of justice would be sufficiently met if the sentence of appellant/Jaglal Nut (Cr. Appeal No. 2532/2017) is reduced to the period of custody which he has already undergone.

27. The appeal of appellant/Jaglal Nut (Cr. Appeal No. 2532/2017) is therefore partially allowed with the modification in the sentence as aforesaid.

28. Appellant/Jaglal Nut is in custody. He is directed to be released forthwith, if not wanted in any other case.

29. Appellant/Kanhaiya Nut (Cr. Appeal No. 2695/2017) is on bail. He is discharged of the liabilities of the bail bonds.

30. Let a copy of the judgment be transmitted to



the concerned Superintendent of Jail for compliance,
informant and record.

(Ashutosh Kumar, J)

Shageer/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	16/07/2018
Transmission Date	16/07/2018

