

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.574 of 2017

Arising Out of PS.Case No. -43 Year- 2013 Thana -JANDAHA District- VAISHALI(HAJIPUR)

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Ajit Kumar Rai, S/o Late Harender Rai, resident of Village- Jahanabad, Police Station- Lalganj, District- Vaishali.

.... Appellant/s

Versus

The State of Bihar.

.... Respondent/s

with

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Criminal Appeal (SJ) No. 859 of 2017

Arising Out of PS.Case No. -43 Year- 2013 Thana -JANDAHA District- VAISHALI(HAJIPUR)

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Sukil Kumar Sahni, S/o Late Dhana Sahni, R/o Vill- Masudhan Pakri, P.S.- Lalganj, District- Vaishali.

.... Appellant/s

Versus

The State of Bihar.

.... Respondent/s

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Appearance :

(In CR. APP (SJ) No.574 of 2017)

For the Appellant/s : Mr. Abhimanyu Sharma, Advocate

For the Respondent/s : Mr. Bipin Kumar, APP

(In CR. APP (SJ) No.859 of 2017)

For the Appellant/s : Mr. Dilip Kumar Roy, Advocate

For the Respondent/s : Mr. Sujit Kumar Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT

Date: 20-02-2018

Both the appeals have been heard together and a common judgment is being passed.

2. The appellants aforesaid have been convicted under Sections 395 and 412 of the Indian Penal Code vide judgment dated 09.01.2017 passed by the learned Sessions Judge, Vaishali at Hajipur in connection with Sessions Trial No. 376 of 2013, arising out



of Jandaha P.S. Case No. 43 of 2013 and by order dated 10.01.2017, they have been sentenced to undergo rigorous imprisonment for seven years for both the offences and have been directed to pay fine of rupees five thousand and in default of payment of which, they have been directed to further suffer imprisonment for three months.

3. The appellants are alleged to have committed dacoity along with five others in a Gramin Bank and were found in possession of Rs. 17,250/- and firearms.

4. The prosecution case is based on the F.I.R lodged by Bindeshwar Singh, the Branch Manager of the bank in which the dacoity is said to have been committed, on 01.03.2013 and who has been examined as P.W. 5 at the trial.

5. Bindeshwar Singh (P.W. 5) has alleged that on 01.03.2013, while he was present in the bank and Surendra Narain, the cashier of the bank, who has been examined as P.W. 6 was sitting behind the cash counter and was dealing with the customers, four persons entered the bank premises. Out of them, two miscreants came inside the cash counter and rest two of them stood outside the cash counter. One of the miscreants, who had entered the counter, pointed a weapon at him and thereafter, on point of weapon aimed at P.W. 6, cash in denominations of Rs. 1000/-, Rs. 500/-, Rs. 100/-, Rs. 50/- as well as Rs. 20/- was taken away. One of the customers viz. Lalan



Kumar, who has been examined as P.W. 7 was also divested of Rs. 20,000/- which was in his possession. One of the accused persons was carrying a black coloured bag whereas the other was wearing a helmet. The miscreants fled from the bank premises on three motorcycles towards western direction. While fleeing away, two bombs were also exploded and firing was resorted to. Some of the villagers started chasing the miscreants. As soon as the miscreants left the bank premises, information was given on mobile telephone to the local police station and people of Laxmanpur village were also informed and were asked to catch hold the miscreants. Shortly thereafter, the informant/P.W. 5 learnt that two of the accused persons have been caught by the villagers of Laxhmanpur and they are being assaulted. The informant claims to have gone along with the police party to the place where the aforesaid two persons were nabbed by the villagers. They disclosed their names as that of the appellants. The aforesaid appellants further disclosed that in the act of loot, Suraj Kumar Sinha, Birendra Kumar Sharma, Sanjay Kumar Singh and Dharmendra Kumar had also participated. From the possession of the appellants, one country made pistol and some cartridges were recovered from both of them. A black coloured bag was also recovered which was found to be stashed with Rs. 17,200/-. When the informant went back to the bank premises, he was informed that a



total amount of Rs. 49,250/- had been looted away. The miscreants were stated to be between the age group of 20-30 years and were fair complexioned. On the basis of the aforesaid fardbeyan statement of P.W. 5, Jandaha P.S. Case No. 43 of 2013 dated 01.03.2013 was instituted for the offences under Section 395 and 412 of the Indian Penal Code.

6. The police, after investigation, submitted charge-sheet whereupon cognizance was taken and the case was committed to the Court of Sessions for trial. Learned Trial Judge viz. Sessions Judge, Vaishali at Hajipur, after examining nine witnesses on behalf of the prosecution, convicted the appellants as aforesaid.

7. Abhilesh Kumar Singh, Bir Kumar Singh, Nand Kishore Singh and Krishna Paswan have been examined at the trial as P.Ws. 1 to 4 respectively as they had been witness to the arrest of the appellants by the villagers and seizure of firearm weapons and looted cash. However, at the trial, all the aforesaid witnesses have not supported the prosecution version and have been declared hostile. All of them have stated that nobody was arrested in their presence and similarly, nothing was seized in their presence.

8. Learned counsel for the appellants, therefore has submitted that the only reason for the appellants to have been put on trial was because of their being apprehended by the villagers on



hot chase.

9. The informant of this case, as stated earlier, has been examined as P.W. 5. Though he has supported the prosecution version of occurrence of dacoity in his bank but has not identified the appellants in the dock. He has proved the fardbeyan and the F.I.R and has clearly stated in his examination-in-chief that he did not recognize anyone of the accused persons including the appellants.

10. However, the cashier of the bank viz. Surendra Narain, who has been examined as P.W. 6 has identified the appellants. In his examination-in-chief, he has deposed that the two miscreants who had entered cash counter were identified by him. But, in his cross examination, he has stated that he did not know the names of either of the appellants. With respect to appellant Sukil Kumar Sahni, the aforesaid witness has stated that he had pointed the weapon at him before taking away cash from the cash counter. What is of relevance is recorded in paragraph 5 of his cross-examination. He has stated that after the miscreants were arrested, he did not have the occasion to see anyone of them.

11. Learned counsels appearing for the appellants have therefore stated that such identification loses its significance as the appellants were neither put on Test Identification Parade nor P.W. 6 ever got to see the accused persons. It would thus be, it has been



argued, extremely difficult to rely upon the sole identification of the appellants by P.W. 6, and that also after a lapse of so many years.

12. Lalan Kumar, a customer of the Bank who is said to have been robbed by the miscreants in the bank premises, has been examined as P.W. 7. He has clearly stated that he could not identify anyone of the miscreants as he had become very nervous. Nothing was seized in his presence and whatever paper was given to him to sign, he signed on the aforesaid paper.

13. Daya Shankar Prasad, who had conducted the investigation, has been examined as P.W. 8. He has supported the prosecution version but in the cross examination, he has stated that the seizure list was made by one Mithilesh Jha on his direction, which fact was not recorded by him in the case diary. He has also admitted that the notes which are said to have been recovered from the possession of the appellants did not have any sticker of any Bank and the notes were not sent by him to be identified by anyone of the Bank employees. Whatever was seized in his presence was not sealed by him and he did not even put any specific identification mark over the seized items including cash of Rs. 17,200/-.

14. Vijay Kumar Singh (P.W. 9) is the Police Officer, who had submitted the charge-sheet under Section 173 of the Cr. P.C.



15. Learned counsels for the appellants have, therefore argued that but for a vague statement in the F.I.R that the miscreants were arrested by the villagers of Laxmanpur, there is no other material on which the appellants could be convicted and sentenced for the offence under Sections 395 and 412 of the Indian Penal Code.

16. On perusal of the records and on going through the evidence, it appears that the factum of the arrest of the appellants by the villagers has also not been established/proved. No person of the village Laxmanpur has been brought forward by the prosecution for proving the arrest of the appellants by the villagers while fleeing away after looting the bank. The seizure list witnesses having turned hostile and not supporting the prosecution version further makes the case doubtful with respect to the correct identification of the appellants. That apart, the evidence of the Investigating Officer (P.W. 8) who conducted the investigation that he had asked somebody to make the seizure list and his not having entered the same in the case diary further creates doubt with respect to the prosecution version. Admittedly, the bank notes which were stated to have been recovered were not sent for any examination and they were not even tallied by anyone of the bank employees.

17. In the absence of any identification mark



having been put on the notes or the black bag containing the said notes which was allegedly recovered from the possession of the appellants, the factum of recovery stands completely uncorroborated. Anybody could be in possession of bank notes worth Rs. 17,200/-. Not sealing the same and not putting any identification mark over the said notes casts a death knell on the prosecution version when the entire case is based upon the arrest of the appellants by the villagers of Laxmanpur.

18. Thus, for all practical purposes, there is no evidence on record except for the identification of the appellants by P.W. 6 only.

19. In the absence of any other corroborating material, the single identification by P.W. 6 of the appellants is not safe to be relied upon for sustaining the conviction and sentence of the appellants.

20. Finding the prosecution case to be totally deficient in materials establishing the guilt of the appellants, this Court has no option but to set aside the judgment and order of conviction passed by the Trial Court.

21. Thus, the judgment of conviction dated 09.01.2017 and order of sentence dated 10.01.2017 passed by the learned Sessions Judge, Vaishali at Hajipur in connection with



Sessions Trial No. 376 of 2013, arising out of Jandaha P.S. Case No. 43 of 2013 are set aside and the appeals are allowed.

22. The appellants are acquitted of all the charges.

23. The appellant/Ajit Kumar Rai (Cr. Appeal No. 574 of 2017) is on bail. He is discharged from the liabilities of his bail bonds.

24. The appellant/Sukil Kumar Sahni (Cr. Appeal No. 859 of 2017) is in custody. He is directed to be released from jail forthwith, if not wanted in any other case.

25. Let a copy of this judgment be communicated to the Superintendent of jail for information, compliance and record.

(Ashutosh Kumar, J)

Shageer/-

AFR/NAFR	NAFR
CAV DATE	NA
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