

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.2225 of 2017

Arising Out of PS.Case No. -172 Year- 2015 Thana -
NATHNAGAR District- BHAGALPUR

=====

Pawan Yadav @ Pawaniya Yadav @ Pawaniya @ Pawan Kumar,
son of Upendra Yadav, resident of Village-Raghopur Tikar, P.S.-
Madhusudanpur (Nathnagar), District-Bhagalpur

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Devendra Kumar Pandey, Adv

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

=====

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT

Date: 16-08-2018

The appellant has been convicted under Sections 387 and 411 of the Indian Penal Code by judgment dated 5th of September, 2016 and by order dated 14.04.2016, he has been sentenced to undergo rigorous imprisonment for three years, fine of Rs. 5000/- and in default of payment of fine, to further suffer simple imprisonment for two months for both the offences referred to above. The sentences however have been ordered to run concurrently.

2. On the self statement of P.W. 2/Swayam Prabha, S.H.O. and informant of the case, a case vide Nathnagar P.S. Case No. 172 of 2015 dated 25.08.2015 was registered for investigation under Section 395 of the Indian Penal Code.

3. It was alleged by P.W. 2 that on secret information that *dacoity* is being committed in the country made liquor shop



of one Arun Kumar Sah, the Police Party, headed by P.W. 2 reached the place of occurrence. One of the staff of aforesaid Arun kumar Sah viz. Gopal Prasad (P.W. 11) disclosed that the appellant along with several others had come to the shop and had forcibly taken away the cash kept in the cash box amounting to Rs. 4682/- which was available in the cash box in different denominations. The money was snatched on the point of pistol.

4. The Police, after investigation submitted charge-sheet under Section 395 of the Indian Penal Code, whereupon cognizance was taken and the case was committed to the Court of Sessions for trial.

5. The Trial Court, after examining eleven witnesses on behalf of the prosecution, convicted the appellant under Sections 387 and 411 of the Indian Penal Code and not under Section 395 of the Indian Penal Code and sentenced him as aforesaid.

6. The learned counsel for the appellant has submitted that the evidence with respect to the snatching of the money from the liquor shop of Arun Kumar Sah is incorrect and the evidence adduced on behalf of the prosecution is highly discrepant. No charge was framed under Section 387 of the Indian Penal Code and even from the evidence which has been brought on record, it could not be established that the aforesaid amount of Rs. 4682/- was the looted property or that it was



looted on the point of gun. If there was no conviction under Section 395 of the Indian Penal Code, the appellant should not have been convicted under Sections 387 and 411 of the Indian Penal Code.

7. Out of the eleven prosecution witnesses, but for three witnesses viz. P.W.6/Gupteshwar Prasad, P.W.7/Shiv Shankar and P.W. 11/Gopal Prasad, all other witnesses are Police personnel.

8. It has been argued on behalf of the appellant that the occurrence of extortion did not take place in front of those witnesses. Whatever was stated by P.W.11/Gopal Prasad, one of the employees of Arun Kumar Sah (shop owner), has been believed by the aforesaid witnesses and the same has been reiterated during trial. But for the evidence of P.W. 11, there is no other evidence with respect to extortion of money by the appellant. The only evidence therefore is recovery of an amount of Rs. 4682/- from the possession of the appellant. However, without any distinctive mark on the aforesaid currency notes of different denominations, the same could not be held to be stolen property.

9. It has further been argued that on the same set of evidence, the other accused persons have been acquitted of the charges. Two of the independent witnesses have resiled from their statements. Thus, the only statement which is against the



appellant is the statement of P.W. 11 who has testified to the fact that the appellant had taken away the money kept in the cash box in the shop of Arun Kumar Sah.

10. What strikes this Court is that the amount which was recovered from the possession of the appellant was the same as was narrated by Gopal Prasad (P.W.11) before the P.W.2/Sawyam Prabha, the S.H.O who has lodged the F.I.R. The appellant was arrested on hot chase. The witnesses have stated that the appellant was being interrogated by some other Police officer and then the recovery was made. Thus, even though the factum of extortion was not witnessed by anyone of the independent witnesses, the fact remains that the same amount of money was recovered from the appellant immediately after the occurrence.

11. True it is that there was no distinctive mark over those notes for those notes to be held to be the stolen property but since the amount of cash was of different denominations and that also of lesser denominations and that the same amount was stated to have been stolen/taken away by the witness to the extortion, it stands established that the appellant had taken out money forcibly from the shop of Arun Kumar Sah. That he was caught with the aforesaid amount further establishes that he was in possession of the stolen property.

12. Thus, even though the evidence is slightly



discrepant, the discrepancy is not such which would render the prosecution version doubtful.

13. Justifiably, for the paucity of evidence, no conviction has been recorded under Section 395 of the Indian Penal Code. Since the offence under Sections 387 and 411 of the Indian Penal Code are of a lesser genre, the appellant could have been convicted for the aforesaid offences even though no charges were framed under those sections.

14. Regard being had to the nature of accusation, the discrepant deposition of the witnesses, amount of money which is said to have been snatched and the period for which the appellant has been made to face trial, this Court is of the view that the interest of justice would be sufficiently met if the sentence imposed upon the appellant is reduced to the period of custody which the appellant has already undergone for both the sentences.

15. Accordingly, the judgment and order of conviction and sentence dated 05.09.2016 and 14.09.2016 respectively passed by the learned 4th Additional Sessions Judge, Bhagalpur in Sessions Trial No. 07 of 2016/T.R. No. 03 of 2016, arising out of Nathnagar P.S. Case No. 172 of 2015 is upheld and affirmed. However, the sentence imposed upon the appellant is modified to the extent of the period which he has already undergone in custody.



16. The appeal is thus partially allowed.

17. The appellant is in custody. He is directed to be released from jail forthwith, if not wanted in any other case.

18. A copy of the judgment be transmitted to the Superintendent of the concerned Jail for information, compliance and record.

(Ashutosh Kumar, J)

Shageer/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18/08/2018
Transmission Date	18/08/2018

