

IN THE HIGH COURT OF JUDICATURE AT PATNA**Criminal Appeal (SJ) No.631 of 2016**

Arising Out of PS.Case No. -1 Year- 2001 Thana -JOGBANI District- ARRARIA

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Jaini Mandal @ Jauni Mandal @ Jai Prakash Mandal, Son of Late Dhanpat Mandal resident of village- Thutti P.S.- Bhimpur, Dist- Supaul At Present- Resident of Village- Sahbajpur, P.S. Jogbani, Dist- Araria

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Ramesh Kumar Singh-Advocate

For the Respondent/s : Mr. Bipin Kumar-A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

Date: 29-05-2018

The appellant Jaini Mandal @ Jauni Mandal @ Jai Prakash Mandal has been found guilty for an offence punishable under Section 395 I.P.C and sentenced to undergo R.I. for 10 years as well as to pay fine appertaining to Rs.25,000/- and in default thereof, to undergo S.I. for six months, additionally vide judgment of conviction dated 01.07.2016, order of sentence dated 02.07.2016 passed by the 1st Additional Sessions Judge, Araria in Sessions Trial No.730 of 2002/18 of 2016.

2. The armed miscreants raided the office of Sahara India in the evening hour on 02.01.2001 and after assaulting the staffs as well as threatening them to do away with their lives on the point of deadly weapons which they were carrying, the unknown miscreants decamped with Rs.5,70,311/- and during course of escape also fired



to terrorize and for that, on the written report of Rakesh Kumar Karn, one of the employee, Jogbani P.S.Case No.1/2001 was registered against unknown.

3. It is further evident that during course of investigation, presence of certain miscreants were procured either by means of their apprehension or, having been remanded from another case, put on T.I. Parade having been identified and on the basis thereof, appellant along with Vinod (since absconding) were charge-sheeted. On the basis of which, faced trial met with the ultimate result, subject matter of instant appeal.

4. The defence case, as is evident from the mode of cross-examination as well as statement recorded under Section 313 Cr.P.C is that of complete denial. Furthermore, it has also been pleaded that the staffs of Sahara India emblazed the amount and then thereafter, taking the police in their collusion got this case filed wherein on wrong and false pretext, appellant has been victimized.

5. In order to substantiate its case, prosecution had examined altogether sixteen P.Ws. who are PW-1. Mithilesh Kumar Sinha, PW-Muneshwar Rajak, PW- 3 Pramod Kumar, PW-4 Kunj Bihari Srivastav, PW-5 Rakesh Kumar Karn, PW- 6 Harendra Choudhary, PW- 7 Shiv Nath Gupta, PW- 8 Rakesh Sharma, PW- 9 Grijesh Kumar Tiwary, PW-10 Kishan Lal Pansari, PW-11 Manoj Kumar Agarwal, PW- 12 Hari Kesh Agarwal, PW-13 Dhiraj Kumar



Baid, PW- 14 Devendra Poddar, PW-15 Ajai Prasad Singh and PW-16 Jawed Ahamad as well as had also exhibited the documents as Ext.1 signature of P.W.5, Ext.2 series written report and entries made in the ledger, Ext.3 series daily log book receipt from 29.12.2000 to 4.1.2001, Ext.4 identification mark of P.W.16 of formal F.I.R, Ext.5 endorsement over fardbeyan and Ext.6 T.I.P chart. Nothing has been adduced on behalf of the defence.

6. It has been submitted on behalf of learned counsel for the appellant that I.O. has not been examined, the Magistrate, who conducted T.I.Parade has not been examined and further, manner whereunder process of identification has been claimed, is found suspicious one, but on account of deficiency at the end of the appellant while cross-examining the relevant witnesses that means to say, PW.1, PW.2 and PW.5, who claimed identification, he is not going to argue the appeal on its merit. On the other hand, it has been submitted that from the judgment impugned, it is evident that appellant has got no criminal antecedent. His age was ascertained as 52 years by the learned lower Court on the date of recording of statement under Section 313 of the Cr.P.C. which happens to be 07.06.2011 and the same has been incorporated in the judgment impugned. So, for the present, he happens to be round about 60 years of age. Furthermore, he remained under custody for six years, four years during course of conduction of trial while continuously from the date of judgment that means to say, since 01.07.2016. In the aforesaid



facts and circumstances, it has been submitted that the sentence whatever been inflicted by the learned lower Court should be reduced as the period having already undergone.

7. On the other hand, learned Additional Public Prosecutor opposed the prayer and submitted that undue sympathy should not be shown to the convict, more particularly when the offence for which an accused is convicted, happens to be heinous one. Accordingly, prayer should not be entertained.

8. After going through the record as well as considering the rival submissions, it looks appropriate to accept the submission having been made on behalf of the appellant and that being so, maintaining the conviction under Section 395 I.P.C., retaining the fine along with default clause prescribed therefor, the substantial sentence inflicted by the learned lower Court, R.I. for 10 years is reduced to sentence already undergone. In terms thereof, instant appeal is disposed of. In case, fine amount is deposited, then in that event, appellant will be released forthwith otherwise would suffer the period having prescribed in default thereof.

(Aditya Kumar Trivedi, J)

Vikash/-

AFR/NAFR	A.F.R.
CAV DATE	N.A.
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