

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.546 of 2015

Arising Out of PS.Case No. -56 Year- 2007 Thana -KARJA District- MUZAFFARPUR

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Bablu Rai @ Bablu Roy S/o Raudi Rai Resident of village - Manikpur, P.S.
Saraiya, District - Muzaffarpur

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance:

For the Appellant/s : Mr. Sanjay Kumar @ S.K., Adv.

For the Respondent/s : Mr. Binod Bihari Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 23-04-2018

Appellant, Bablu Rai @ Bablu Roy, has been found guilty for an offence punishable under Section 379 I.P.C. but, no separate sentence has been recorded, under Section 411 I.P.C and sentenced to undergo S.I for 2 years vide judgment of conviction and order of sentence dated 11.08.2015 passed by Third Additional Sessions Judge, Muzaffarpur in Sessions Trial No. 398/2009.

2. Bishwanath Sahni(PW-6) along with his son Yashwant Kumar, (PW-8) while was in a way to his house from Karza after attending the local market on 26.07.2007 in the evening hour, halted at a place to pee and during course thereof, motorcycle borne criminals snatched away mobile from the possession of his son Yashwant. His son raised alarm whereupon, he also raised alarm thief-thief. Fortunately, his co-villager Sanjay Ram was returning from Muzaffarpur over motorcycle seeing whom, he signaled to stop and then, criminals were chased who, seeing that they are being chased, left the motorcycle and began to flee towards village Chamarua. They also left motorcycle and followed the criminals raising alarm whereupon villagers assembled and then both the



criminals were apprehended who were taken to the place of local Mukhiya where were searched out and during course thereof, from the possession of appellant Bablu Rai, the looted mobile set was recovered. Police was informed who came and before whom, he gave his fardbeyan. Police had also prepared production-cum-seizure list. Seized the mobile as well as the motorcycle over which accused persons were ridden. After registration of Karza P.S. Case No. 56/2007, investigation was taken up and after completing of the same, charge sheet was submitted followed with conduction of trial, meeting with ultimate result, subject matter of instant appeal.

3. Defence, case as is evident from mode of cross-examination as well as statement recorded under Section 313 of the Cr.P.C is that of complete denial. However neither ocular nor documentary evidence has been adduced in defence.

4. In order to substantiate its case, prosecution had examined altogether nine PWs, who are PW.1-Sujit Kumar, PW.2-Ganesh Sahni, PW.3-Satyendra Kumar, PW.4-Kishandeo Paswan, PW.5-Virendra Kumar Rai, PW.6- Vishwanath Sahni (informant), PW.7- Shiv Kumar Rai, PW.8-Yashwant Kumar, PW.9-Dayanand Prasad. Side by side had also exhibited Ext.-1, Ext.-2- signature of seizure list witness, Ext.3- signature of informant over fardbeyan. At an initial stage of trial, as it appears there happens to be slackness at the end of the accused and that happens to be reason behind that PW. 1, 2, 3, 4 were not cross-examined, however PW. 2, PW. 3 and PW.4 were recalled subsequently for cross-examination but PW.1 not.

5. Be that as it may, the nature of evidence suggest that



prosecution witnesses were not at all inclined to support the case of the prosecution. PW.2 and PW.5 happen to be the seizure list witnesses who have not deposed with regard to merit of the case rather they simply deposed that their signature happen to be over production-cum-seizure list. PW.3, PW.4, PW.7, during course of examination-in-chief have substantiated the case of the prosecution but, during course of cross-examination they themselves disowned their status and thus, nailed their evidence. PW.8 who happens to be the son of the informant, in other words victim though supported the case of the prosecution but in dock, he failed to identify the accused. Now remains the evidence of informant, PW.6. It is evident that during course of examination-in-chief he had supported the case of the prosecution, identified the accused in dock but, during cross-examination at Para-3, he had stated that he had not identified the accused during course of snatching of mobile from his son. He had further stated that after covering 5 K.M. along with his co-villagers Sanjay Ram, he came to know that the Officer-in-charge had taken away some person whereupon they have gone to the police station where, police had shown the accused and said that recovery has been made from this accused and on the basis thereof, he had identified the accused in dock. He further stated that his signature was taken on plain paper. He had further stated that no recovery was made in his presence. He is not knowing from where the seized mobile was recovered whether it was recovered from the possession of accused he is not knowing. In the aforesaid background, the evidence of PW.1 though not. Cross-examined is not found fit for supporting lifeline to the prosecution. In likewise manner, the evidence of I.O, PW.9 also lost its gamut.



6. Accordingly, the judgment of conviction and sentence recorded by the learned lower court is set aside. Appeal is allowed. Appellant is on bail, hence discharged from its liability.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

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