

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.602 of 2015

Arising Out of PS.Case No. -112 Year- 2014 Thana -SARAI District- VAISHALI(HAJIPUR)

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Abhay Kumar, son of Chunchub Bhagat, Resident of village-Sahatha, P.S.-
Bhagwanpur, District- Vaishali.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

with

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Criminal Appeal (SJ) No. 672 of 2015

Arising Out of PS.Case No. -112 Year- 2014 Thana -SARAI District- VAISHALI(HAJIPUR)

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1. Munna Baitha Son of Jailal Baitha, Resident of village- Jalalpur, P.S. Lalganj,
District- Vaishali

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

with

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Criminal Appeal (SJ) No. 681 of 2015

Arising Out of PS.Case No. -112 Year- 2014 Thana -SARAI District- VAISHALI(HAJIPUR)

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1. Sanjay Singh S/o Surendra Singh Resident of village - Kartahan, P.S. Kartahan,
District - Vaishali

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

with

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Criminal Appeal (SJ) No. 712 of 2015

Arising Out of PS.Case No. -112 Year- 2014 Thana -SARAI District- VAISHALI(HAJIPUR)

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1. Sanjeet Kr. Rai @ Sanjeet Kumar son of Bhikhan Rai @ Bhikhan Ram, resident
of village + P.S.- Kudhani, Distt. Muzaffarpur

.... Appellant/s

Versus



1. The State of Bihar

.... Respondent/s

with

Criminal Appeal (SJ) No. 723 of 2015

Arising Out of PS.Case No. -112 Year- 2014 Thana -SARAI District- VAISHALI(HAJIPUR)

1. VICKKY BAITHA @ VIKASH @ VIKCY CHAUDHARY son of Bhukhalu Baitha, R/o Mohalla- Hathsarganj, P.S. Hajipur Town, District- Vaishali

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

with

Criminal Appeal (SJ) No. 736 of 2015

Arising Out of PS.Case No. -112 Year- 2014 Thana -SARAI District- VAISHALI(HAJIPUR)

1. Sanjay Kumar Son of Jagdeo Paswan Resident of Village Kudhani, P.S. Kudhani, District Muzaffarpur.

.... Appellant/s

Versus

1. The State of Bihar.

.... Respondent/s

Appearance :

(In CR. APP (SJ) No.602 of 2015)

For the Appellant/s : Mr. S. N.P Sinha, Sr. Adv.
Mr. J. N. Sinha, Adv.
Mrs. Kanchan Kumari, Adv.
Mrs. Rashmi Bharti, Adv.

For the Respondent/s : Mr. Sujit Kumar Singh, A.P.P.
(In CR. APP (SJ) No.672 of 2015)

For the Appellant/s : Mr. Rajeev Ranjan, Adv.
Mr. Santosh Bharti,

For the Respondent/s : Mr. Sujit kumar Singh APP
(In CR. APP (SJ) No.681 of 2015)

For the Appellant/s : Mr. Rajeev Ranjan II, Adv.
Mr. Sunil Kumar, Adv.

For the Respondent/s : Mr. Sujit Kumar Singh, A.P.P
(In CR. APP (SJ) No.712 of 2015)

For the Appellant/s : Mr. Rajeev Ranjan, Adv.
Mr. Santosh Bharti, Adv.

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



(In CR. APP (SJ) No.723 of 2015)

For the Appellant/s : Mr.

For the Respondent/s : Mr.

(In CR. APP (SJ) No.736 of 2015)

For the Appellant/s : Mr. Nachiketa Jha, Adv.

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

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 02-07-2018

1. Since all these appeals originate against the common judgment of conviction and sentence on account thereof, have been heard together and are being decided by a common judgment.

2. Appellants, Abhay Kumar in Cr. Appeal (SJ) No.602 of 2015, Munna Baitha in Cr. Appeal (SJ) No.672 of 2015, Sanjay Singh Cr. Appeal (SJ) No.681 of 2015, Sanjeev Kumar Rai @ Sanjeet Kumar in Cr. Appeal (SJ) No.712 of 2015, Vickky Baitha @ Vikas @ Vikcy Chaudhary in Cr. Appeal (SJ) No.723 and Sanjay Kumar in Cr. Appeal (SJ) No.736 of 2015, have been found guilty for an offence punishable under Section 399 IPC and sentenced to undergo rigorous imprisonment for 10 years as well as to pay fine appertaining to Rs.5000/-, under Section 402 of the IPC and sentenced to under rigorous imprisonment for seven years as well as to pay fine appertaining to Rs.4,000/- (having no default clause) with a further direction to run the sentences concurrently with a further direction to set off the period having undergone during trial as provided under Section 428 Cr.P.C vide judgment of conviction dated 07.09.2015 and



order of sentence dated 10.09.2015 passed by VIth Addl. Sessions Judge, Vaishali at Hajipur in Sessions Trial No.44 of 2015.

3. Ranjeet Kumar (P.W.5) recorded his own statement on 09.07.2014 at about 1 A.M. divulging the fact that on 08.07.2014 at about 9.30 P.M., he received confidential information with regard to assemblage of anti social elements at Sarai Bazar who are engaged in hatching a conspiracy to commit an offence which has been communicated to superior police officials and as per direction, police officials of Bhagwanpur police station have been requisitioned and then thereafter, raid has been conducted and during course thereof, it has been alleged that five persons, namely, Chandrarik Sahani, Sanjay Kumar, Abhay Kumar, Vinod Kumar Sahni and Babloo Sahni were apprehended while remaining escaped taking benefit of darkness, on search, from the possession of Chandrarik Sahni scissor like cutter was seized while from the possession of the Sanjay Kumar Screw driver, Binod Kumar rod, were recovered for which seizure list was prepared. Furthermore, it has also been disclosed that on interrogation, they have disclosed the names of their associate who managed to escape as Munna Baitha, Sanjay Singh, Sanjeet Kumar Vikas. It has also been disclosed by them that they were planning to commit dacoity in the house of a businessman at locality of Sarai



market.

4. After registration of Sarai P.S. Case No.112 of 2014, investigation was taken up and after concluding the same, submitted charge-sheet, followed with trial meeting with ultimate result subject matter of the Appeals.

5. Defence, 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. Furthermore, it has also been pleaded that all the stories whatever been propounded by the prosecution party happens to be concocted. However, nothing has been adduced in defence.

6. In order to substantiate its case, prosecution had examined altogether 7 P.W.s. who are P.W.1-Uday Pratap Singh, P.W.2-Ramashankar Pandey, P.W.3-Ram Chandra Pathak, P.W.4-Bikram Acjarya, P.W.5-Ranjeet Kumar, P.W.6- Divyendra Bhushan Srivastava and P.W.7-Sone Lal. Prosecution had also exhibited Ext.1, signature of P.W.4 over seizure list 1/2 signature of informant P.W.5 over the seizure list, Ext. 2 written report Ext.3 formal FIR. Ext.4 seizure list. Prosecution had also adduced material exhibit Ext.1, Scissor like cutter, Ext.2 Rod and Ext.3 screw driver. As stated, defence had not adduced any evidence either oral or documentary.

7. Learned counsel for the appellants have submitted that from



conduct of prosecution witnesses, it is evident that they have acted in revengeful manner and that happens to be reason behind presence of so many loopholes at their end, right from initial stage and even at the stage of trial. In order to justify the same, it has been submitted that although there happens to be the seizure list consisting name of Navin Kumar and Ajay to be the seizure list witnesses but from self statement of the informant, P.W.5 it is evident that their names did not transpire. There happens to be no whisper in the self statement that the seizure was made in presence of seizure list witness. That means to say there happens to utter violation of Section 100 of the Cr.P.C. On this score, the learned counsel for the appellant further submitted that when Ext.4, seizure list is gone through, it is evident that it suffers from vagueness as nothing specifically has been suggested from whom what kind of weapon has been seized. Apart from this, the seizure of the articles whatever been shown are not at all weapon, much less prohibited one and so, their possession could not made liable and in likewise manner, on the basis thereof, no adverse inference could be drawn as, prosecution had failed on that very score. In order to substantiate the same, it has also been submitted that I.O. P.W.6 could not be able to locate during course of investigation at whose house, dacoity was being planned.

8. It has also been submitted that so far evidences of P.W.1,



P.W.2 and P.W.3 are concerned, they had not identified the accused// appellant in dock and likewise status happens to be of P.W.6. So far evidence of P.W.4 and 5 are concerned, it is evident that appellants Munna Baitha, Sanjay Singh, Sanjeet Kumar, Vikash @ Vicky were not at all apprehended at the spot and the prosecution party could not avail an opportunity to see during course of fleeing further, they were known since before. In that circumstance, identification in dock has got no legal value, whereupon could not be relieved upon. So, in totality of the event, the finding so recorded by the learned lower Court appears to be unsustainable.

9. The learned Addl. P.P. while controverting the submission made on behalf of the appellants has submitted that the finding recorded by the learned lower Court did not require interference in the facts and circumstances of the case, more particularly having presence of the appellants at the scheduled place with the weapon which could be the weapon to facilitate committing of an offence including that of dacoity which had already been perceived by the learned lower Court. So, the finding recorded by the learned lower Court does not attract interference.

10. P.W.1, P.W.2 and P.W.3 are the Sepoy who had participated during course of conduction of raid and as is evident, on



facts, they have supported the case of prosecution but, they failed to identify the accused in dock and that being so, there happens to be deficiency in their evidence to that extent. P.W.7 is the formal witness in nature, as he had produced material exhibit. During cross-examination, he had stated that on all the three material exhibits case number are not specifically, independently parted. In Para 5, he had stated that fragrance of new cloth is coming out from the cloth by which material exhibit has been wrapped. In Para- 9, he had admitted that Showal and cutter both are new.

11. Now, remains the evidence of P.W.9, the police officials who on the alleged date was posted at Bhagwanpur P.S. P.W.5, the informant as well as P.W.6. P.W.4 during course of his evidence had stated that when they reached at the place of occurrence, the accused person began to flee and during course thereof, five persons were apprehended while remaining escaped. Furthermore, the apprehended accused disclosed the identity of their associate who managed to escape who were arrested later on relating to different cases. They were searched in presence of two seizure list witnesses as well as people who have assembled there and during course thereof, cutter 3½ feet long, 2 feet pointed showel and one screw driver were seized. During course of identification, he had claimed identification of Sanjay Singh and one person of village Sahatha, and one person



belonging to village Purni. During cross-examination at para 10, he had stated that he had not gone to the place of accused belonging to Purni. Again stated that most probably he happens to be involved in this case. But, surprisingly, there happens to be no disclosure at this end that accused assembled for the purpose of commission of dacoity and in likewise manner, he had failed to properly identify from whose possession what kind of incriminating material was seized.

12. P.W.5 is the informant. During examination-in-chief, he had reiterated whatever been disclosed in his self statement, (exhibited). Furthermore, during course of identification of the accused, claimed identification of Munna Baitha by name while rest accused were identified by him by face. During cross-examination, he had admitted at Para- 4 that in seizure list, there happens to be no disclosure from whose possession what has been seized. Apart from this, same kind of lacunae is visualizing from this evidence also that the assembled was for the purpose of commission of the dacoity and if so, at whose favour.

13. P.W.6, is the I.O. who, being entrusted with the investigation, proceeded therewith, recorded statement of the witnesses, inspected the place of occurrence and then thereafter submitted charge-sheet against the accused. During cross-



examination at para-4, he had stated that though he had seen the seized article but he had not mentioned the same in the case diary. However, he had not taken possession thereof nor the same has been deposited in Thana Malkhana by him. In para 26, he had further stated that as per the seizure list, it could not be traced out from whose possession what kind of article was seized. In para 29, he had further admitted that he failed to locate in who house dacoity was to be committed.

14. Unless and until there happens to be assemblage for the purpose of commission of dacoity which, the prosecution is under obligation to properly identify mere assemblage would not attract application of Section 399 / 402 of the IPC.

15. Consequent thereupon, the judgment impugned did not justify its prevalence. Hence is set aside. All the Appeals are allowed. Appellants are on bail, hence they are discharged from their liability.

(Aditya Kumar Trivedi, J)

Sanjeev/- Ranjit/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	11.07.18
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