

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.2630 of 2017

Arising Out of PS.Case No. -53 Year- 2003 Thana -GAYGHAT District-
MUZAFFARPUR

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Sajjan Rai, son of Ram Sanyog Rai, resident of Village-Munni
Kalyan, P.S.-Gayghat, District-Muzaffarpur.

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant : Mr. Ajay Kumar Thakur, Adv.
Mrs. Babita Kumari, Adv.
Mr. Molay Kumar Choudhary, Adv.

For the State : Mrs. Abha Singh, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT & ORDER

Date: 23-03-2018

The appellant/Sajjan Rai has been convicted under Section 395 of the Indian Penal Code by judgment dated 31.07.2017, passed by the learned 12th Additional Sessions Judge, Muzaffarpur in Sessions Trial No. 329 of 2004, arising out of Gayghat P.S. Case No. 53 of 2003, and by order dated 04.08.2017, he has been sentenced to undergo rigorous imprisonment for 10 years, to pay a fine of Rs. 10,000/- and in default of payment of fine, to further



suffer rigorous imprisonment for 6 months.

2. A burglary had taken place in the house of the informant/Ram Chandra Thakur (P.W. 3).

3. The informant/Ram Chandra Thakur (P.W. 3) has alleged in his First Information Report that while he was sleeping in his house along with the family members in the night of 25.04.2003, he heard wailing sound from the neighbouring house. In the meantime, about 8-10 miscreants armed, with torch and bag came to his house also. Since he knew the persons, he opened the door under the impression that villagers had come for some work. When he opened the door of his house, he saw that the persons were armed with gun and pistol. He identified Bablu Singh, Ranjit Singh and Pinku Singh who were standing in front of his door with pistols in the hands. From the conversation amongst the miscreants, he heard the name of the appellant/Sajjan Rai and one Bablu Rai. The miscreants, after breaking upon the chest and other closets took away belongings in cash and ornament. The wife of P.W. 3 was also assaulted. It has also been alleged by P.W. 3 that after the miscreants had completed the act of looting, one Bablu Singh told the appellant/Sajjan Rai that the miscreants have performed well in looting. The miscreants, thereafter, left through an orchard. On alarm raised by P.W. 3, many persons of the



neighbourhood also arrived. They informed him that the miscreants were about ten in number and had looted the neighbour's house as well.

4. On the basis of the aforesaid *fardbeyan* statement by P.W. 3, Gayghat P.S. Case No. 53 of 2003 was instituted for investigation under Section 395 of the Indian Penal Code.

5. The police after investigation submitted charge-sheet, whereupon cognizance was taken and the case was committed to the Court of *Sessions* for trial.

6. The learned Trial Court after taking into account the deposition of the ten witnesses offered on behalf of the prosecution and none on behalf of the defence, convicted and sentenced the appellant/Sajjan Rai as aforesaid.

7. Mr. Ajay Kumar Thakur, learned counsel appearing for the appellant, has submitted that the identification of the appellant in this case is absolutely doubtful and there was no material before the Trial Court to have convicted and sentenced the appellant. In support of his contention, he has submitted that P.W. 3/informant in his First Information Report has only stated that he heard the name of the appellant/Sajjan Rai from the conversation which was made between the accused persons. He did not at all, in



the First Information Report, state about his having spotted the appellant when he had opened the door in the night when the occurrence had taken place. In fact, a categorical statement has been made by him that he saw three persons, viz. Bablu Singh, Ranjit Singh and Pinku Singh, whereas the others were seen standing outside the house. However, later, in his deposition before the Trial Court, he has claimed to have identified the appellant/Sajjan Rai as having participated in the occurrence.

8. P.W. 3 (informant), in his cross-examination, has stated that he did not know the appellant/Sajjan Rai from before, even though he and the appellant hail from different contiguous *Panchayats*. A suggestion was given to him that because of enmity during elections he has been falsely implicated in this case which he has denied.

9. From the deposition of P.W. 3, it becomes very obvious that he has improved upon his version during trial and has stated that he saw the appellant wearing a *lungi* and a shirt. In the absence of the examination of the Investigating Officer, it could not be ascertained whether he had made such statement before the Investigating Officer about his having seen the appellant/Sajjan Rai. As such, the identification of the appellant/Sajjan Rai by the informant (P.W. 3) appears to be doubtful and cannot be relied upon.



10. Similarly the two wives of P.W. 3 (informant), viz. Malti Devi and Nagina Devi, who have been examined as P.Ws. 1 and 2 respectively, have not stated before the Investigating Officer earlier that they had seen the appellant/Sajjan Rai participating in the occurrence.

11. P.W. 1 (Malti Devi) has denied the suggestion that because of enmity at the hustings, the appellant has been falsely implicated. What is relevant to note in the deposition of P.W. 1 is that she has stated that after the occurrence, she met other members of the family. A presumption, therefore, is that the name of the appellant was deliberated upon and then only the allegations have been levelled against him. She has also stated that she had prior to the occurrence, she had never seen the appellant/Sajjan Rai.

12. P.W. 2 (Nagina Devi) though has denied that she did not state before the police that she had identified the appellant/Sajjan Rai committing crime, but her statement also regarding identification of the appellant/Sajjan Rai, has come for the first time in the Trial Court. That apart, she claims to have identified the appellant/Sajjan Rai in the torch light which was flashed by the accused persons.

13. In this view of the matter, no reliance can be placed upon the deposition of P.Ws. 1 and 2 also with



regard to identification of the appellant/Sajjan Rai.

14. Apart from the aforesaid witnesses, the only other person who claims to have seen the appellant/Sajjan Rai at the time of the occurrence is the son of P.W. 3, viz. Prashant Kumar Thakur, who has been examined as P.W. 9. He also had not made any statement before the police earlier about his having identified the appellant/Sajjan Rai.

15. Thus for all practical purposes, but for the name of the appellant/Sajjan Rai having made known to the informant (P.W. 3) through the conversation between the accused persons, there was no other material before the Trial Court to have convicted and sentenced the appellant/Sajjan Rai. There could be many persons with the same name and merely because the name was heard by the informant (P.W. 3), the appellant/Sajjan Rai cannot be convicted and sentenced for the offence charged.

16. There is also no recovery from the possession of the appellant/Sajjan Rai.

17. This Court has no idea as to what happened to the other accused persons, who had participated in this case. There is no reference about the other accused persons in the judgment impugned also.

18. Thus, on a perusal of the evidence adduced on behalf of the prosecution at the trial, this Court is of the



view that it would be rather unsafe to rely upon the deposition of P.Ws. 1, 2, 3 and 9 with regard to the identification of the appellant/Sajjan Rai, suggesting his participation in the crime.

19. For the reasons aforesaid, the judgment of conviction dated 31.07.2017 and order of sentence dated 04.08.2017, passed by the learned 12th Additional Sessions Judge, Muzaffarpur in Sessions Trial No. 329 of 2004, arising out of Gayghat P.S. Case No. 53 of 2003, is set-aside.

20. The appeal succeeds.

21. The appellant/Sajjan Rai is in custody. He is directed to be released forthwith, if not wanted in any other criminal case.

22. Let a copy of this judgment be transmitted to the Superintendent of concerned jail for necessary compliance.

(Ashutosh Kumar, J)

Praveen-II/-

AFR/NAFR	NAFR
CAV DATE	N/A
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