

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.720 of 2016

Arising Out of PS. Case No.-142 Year-2009 Thana- HUSAINGANJ District- Siwan

Chhotelal @ Chhotelal Prasad @ Mithun S/o Late Dukhi Pandit Resident of
Babunia Road, Bania tola, PS Nagar, PS Siwan, District Siwan.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

Criminal Appeal (SJ) No. 730 of 2016

Arising Out of PS. Case No.-142 Year-2009 Thana- HUSAINGANJ District- Siwan

NAUSHAD KHA @ NAUSHAD KHAN @ NAUSHAD Son of Habibulla
Khan@Habiulla Resident of Village- Bhada Kalan , P.S. Siwan Muffasil,
District Siwan.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

(In Criminal Appeal (SJ) No. 720 of 2016)

For the Appellant/s : Mr. Pramod Kumar Singh

For the Respondent/s : Mr. Sri Sujit Kumar Singh

(In Criminal Appeal (SJ) No. 730 of 2016)

For the Appellant/s : Mr. Vijay Kumar Singh

For the Respondent/s : Mr. Sri Sujit Kumar Singh

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT

Date : 22-06-2018

Both the appeals have been heard together and a
common judgment is being delivered.

2. The appellants have been convicted under
Section 412 of the I.P.C. by judgment dated 10.08.2016,
passed by the learned Additional District and Sessions
Judge III, Siwan in Sessions Trial No. 185 of 2010 arising



out of Hussainganj P.S. Case No. 142 of 2009 and on the same day they have been sentenced to undergo R.I. for 8 years; to pay of fine of Rs. 4000/- and in default of payment of fine, to further suffer simple imprisonment for two years for the offence under Section 412 of the I.P.C.

3. The appellants along with nine others were put on trial for offences under Sections 395 and 412 of the I.P.C. They have been acquitted of the charges under Section 395 of the I.P.C. for paucity of any evidence with respect to dacoity. The other accused persons who have been put on trial have been acquitted of all the charges.

4. Tej Bahadur Singh, Head Cashier of Allahabad Bank, Tekari Branch (P.W. 6) had lodged an FIR on 27.10.2009 alleging that while he was coming from Allahabad Bank, Main Branch with Five Laks rupees, he was intercepted by five motorcycle borne miscreants who were riding two motorcycles. All the aforesaid persons had covered their faces. The informant (P.W. 6) was assaulted by fists and slaps and on point of weapon, the money which he was carrying in the boot of his motorcycle was taken away. After the miscreants left the place of occurrence, many persons arrived on the alarm raised by PW 6. Because of the injuries suffered by him during the course of dacoity, PW 6 was taken to Sadar Hospital, Siwan for treatment. He has further stated in the FIR that



the currency notes which he was carrying was of 500 denomination and also gave an assessment that the accused persons were dark complexioned and belonged to the age group of 20-22 years.

5. On the basis of the aforesaid *fardbayan*/statement made by P.W. 6 a case vide Hussainganj P.S. Case No. 142 of 2009 dated 27.10.2009 was instituted for investigation for offence under Section 395 of the I.P.C. against 5 unknown miscreants. The police after investigation submitted charge sheet against 11 accused persons including the appellants whereupon cognizance was taken under Sections 395, 412 and 120B of I.P.C.

6. The learned trial court, after examining 9 witnesses on behalf of the prosecution, acquitted the other accused persons but convicted the appellants under Section 412 of the I.P.C. and sentenced them as aforesaid.

7. The appellants were, as has been stated earlier were acquitted of the charges under Section 395 of the I.P.C.

8. The learned advocates appearing for the appellants have submitted that there is no material in the entire case record to warrant the return of verdict of guilt against them. It has been submitted that none of the



prosecution witnesses have supported the prosecution version and important witnesses have been declared hostile. The circumstances in which the appellants were arrested also goes a long way to show that the appellants were put on trial only on suspicion. Lastly, it has been argued that even if there had been recovery of Rs. 1,00,000/- and 98,000/- from the possession of the appellants respectively, that could not be said to be part of the looted property in the absence of any evidence that the recovered articles were the currency notes which was looted in the occurrence for which the F.I.R. was lodged.

9. In order to appreciate the contention of the appellants, it would be relevant to briefly referred to the deposition of the witnesses. Ram Babu Yadav and Ramesh Yadav, who have been examined as P.Ws. 1 and 2 have not supported the prosecution version and have said before the trial court that they had no knowledge about the occurrence and that they had not got their statements recorded before the police. Similarly, Upendra Yadav (PW 3) though, has claimed to have learnt about the occurrence of dacoity and snatching, but he could not identify anyone of the accused persons including the appellants during the trial. Mainudin Khan and Nasrulla Khan (P.Ws. 4 & 5 respectively) are the seizure list witnesses with respect to the factum of recovery of Rs. 98,000/- from the



agricultural barn of the appellant/Naushad. They have denied that any such recovery was made in their presence. Thus the aforesaid witnesses also have been declared hostile.

10. Tej Bahadur Singh/informant has, though, supported the prosecution version, but is neither a witness to the search and seizure of the appellants nor has he said that he knew about the serial number of the notes which he had taken from the bank and which amount was looted. He did not identify anyone of the accused persons in the dock during trial.

11. Learned counsel for the appellants, therefore, have submitted that despite PW 6 having supported the prosecution version, prosecution case with respect to the guilt of the appellants could not be established. Birendra Prasad (P.W. 7) is a witness to the seizure of Rs. 1,00,000/- from the house of the appellant Chhote Lal. For his not supporting the prosecution version and denying that anything was recovered from the house of appellant/Chhote Lal in his presence, he was declared hostile by the prosecution.

12. Now to the deposition of I.O., Purendra Nath Singh (P.W. 8) on whose statement, the appellants were arrested and charge-sheeted. P.W. 8 has deposed before the trial court that the investigation of the case was



handed over to him on 27.10.2009. Thereafter he recorded the statements of the witnesses. During the course of investigation, he had the occasion to go to Makdumsarai Telhatta crossing and there he found that one person who had covered his face, began to run away after seeing the police party. He was nabbed and he disclosed his name to be Naushad (Appellant in Criminal Appeal No. 730 of 2016). Two cell phones were recovered from the possession of appellant/Naushad. Appellant Naushad, it has been stated by P.W. 8, confessed his guilt and on his showing, Rs. 98,000/-, wrapped in a black polythene was recovered from his agricultural barn. A seizure list was prepared which was signed by P.Ws. 4 and 5. With the same refrain, P.W. 8 has stated that appellant/Chhote Lal Prasad was also arrested on suspicion, who too confessed his guilt and accepted that out of the looted money, Rs. 1,00,000/- came to his share which he had kept in his house. Rs. 1,00,000/- is stated to have been recovered from the house of appellant/Chhote Lal Prasad. Which recovery process was seen by P.W. 7 and one Mohammad Arman who has not been examined at the trial. As has been noted earlier, the aforesaid recovery of Rs. 1,00,000/- from the house of appellant/Chhote Lal has not been supported by the seizure list witness viz. Birendra Prasad (P.W. 7).



13. What is really relevant is that P.W. 8 has clearly stated in the first information report that there was no reference of loot of the mobile phone from P.W. 6. In his cross-examination, P.W. 8 has also stated that he did not get the recovered currency notes identified by P.W. 6 or anybody and did not even have the number of the currency notes recorded. There was no investigation with respect to the recovered currency notes being looted property. He has also admitted in his cross-examination that he did not make any effort to have the statement of the accused persons recorded before any superior police officer or judicial officer.

14. Even P.W. 9, Tripurari Singh, Bank Manager of Allahabad Bank, Siwan branch has not been able to conclusive state that whatever was recovered from the possession of the appellants, was the currency notes which was issued to the informant (P.W. 6) and which was looted. From the perusal of the evidence on record, it appears to be absolutely justified that no conviction was recorded under Section 395 of the I.P.C. as against the appellants or for that matter and other accused persons. There is absolutely no material to bring home charges under Section 395 of the I.P.C. The acquittal of the appellants under Section 395 of the I.P.C. is therefore, sustained and upheld.



15. However, the judgment and order of conviction and sentence of the appellants under Section 412 of the I.P.C. is not fit to be sustained.

16. Even if the deposition of P.W. 8 (I.O.) is to be accepted as true, it cannot be said with certainty that the currency notes which were recovered from the possession of the appellants were the same which was looted from P.W. 6 (informant). No serial number of the notes was provided nor the I.O. has made any effort to ascertain from the bank whether the same notes which were issued to P.W. 6 were looted. In that connection, the explanation offered by the appellants that the recovered money was their property has to be accepted.

17. Appellant/Naushad, in his statement made under Section 313 of the Code of Criminal Procedure has clearly stated that the money which was recovered from his house was the sale proceeds of a piece of land which was sold by his family members. Similar statement has been made by the appellant/Chhote Lal.

18. Thus, there is no connecting link or evidence to justify conviction of the appellants under Section 412 of the I.P.C.

19. For the aforesaid reason, the conviction and consequently, the sentence of the appellants under the aforesaid section is set aside.



20. The appeals are allowed.

21. The appellants are in jail. They are directed to be released forthwith, if not wanted in any other case.

22. A copy of the judgment be sent to the Superintendent of Police of the concerned jail for information, record and compliance.

(Ashutosh Kumar, J)

krishna/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	28.06.2018
Transmission Date	28.06.2018

