

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.226 of 1995

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Ram Chandra Das, S/o Sukhi Das, resident of village Dumari, P.S. Sahpur
Patori, District Samastipur

... .. Appellant/s

Versus

STATE OF BIHAR

... .. Respondent/s

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Appearance :

For the Appellant/s	:	M/s Saket Anand Manoj Kumar Singh Shiv Ganga Kumar Gupta Tej Narayan Singh, Advocates
For the Respondent/s	:	Mr.Dilip Kumar Sinha, APP

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**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA
and
HONOURABLE MR. JUSTICE RAJENDRA KUMAR
MISHRA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA)**

Date : 16-04-2019

The sole appellant, namely, Ram Chandra Das, has preferred this criminal appeal against the Judgment of conviction and sentence Order dated 06.07.1994 passed by the learned 5th Additional Sessions Judge, Samastipur, in Sessions Trial No. 255/203 of 1992/1992, arising out of Patory P.S. Case No. 22 of 1983, by which and whereunder he convicted the sole appellant, Ram Chandra Das, for the offence punishable under Section 396 of the Indian Penal Code and sentenced him to undergo life imprisonment for the offence as stated above.



2. P.W. 4, Bisheshwar Prasad Sah, gave his *fard-e-beyan* to S.I. B.N. Singh of Patory P.S. on 22.3.1983 at 9.15 hours at Baghra to this effect, that in previous night at about 9 A.M., he along with his younger brother Bindeshwar Sah, his wife, mother and children were sleeping in his house. He further claimed that on the alleged date of occurrence at about 1.00 A.M., someone knocked his door, upon which he called his brother Bindeshwar Sah but, in the meantime, dacoits broke the door of his house and started assaulting the women folks of the house. He further claimed that his wife came in the room in which he was sleeping and raised alarm and, anyhow, he along with his wife came out of the house and started fleeing but dacoits hurled bomb, as a result of which, his wife sustained injury. He further claimed that he came on the road and raised alarm and also started pelting bricks on the dacoits and one of the dacoits, namely, Bijendra Singh, opened fire on him but anyhow, he got escaped unhurt. He claimed to have identified F.I.R. named accused Ram Swarup Singh, Kedar Singh, Hardeo Rai and Jawahar Saw. This witness claimed that the aforesaid persons were identified by him while they were coming out from the house after committing dacoity. This witness further claimed that some dacoits went on the roof of the house and



started hurling bomb so that villagers could not come on the place of occurrence. This witness further claimed that his brother Bindeshwar Sah was also pelting bricks on the dacoits. However, dacoits came towards them and after that he along with his brother Bindeshwar Sah started fleeing towards orchard but his brother sustained injury by a bomb hurled by dacoits. The dacoits were collecting looted articles outside the house. The dacoits were in 20-25 numbers. P.W. 4 further claimed that in course of dacoity Ram Sagar Rai and Kameshwar Rai also got injury. This witness further claimed that his wife was taken to hospital and she disclosed that she had identified Mahendra Rai, who had snatched her earring. This witness further claimed that he identified Devendra Rai, while he was fleeing after committing the dacoity. He also claimed that one of the dacoits was of dark complex and of short height and he was looking like appellant, Ram Chandra Das.

3. The formal F.I.R. was drawn up on the basis of *fard-e-beyan* of P.W. 4 Bisheshwar Prasad Sah and after completion of investigation charge-sheet was submitted against appellant and others. The cognizance of the offence was taken and the case was committed to the court of sessions. However, it appears that the trial of the appellant was separated from other



charge-sheeted accused and, accordingly, the appellant was alone put on trial before the trial court in above stated Sessions Trial Case No. 255/203 of 1992/1992, arising out of Patory P.S. Case No. 22 of 1983. However, this appellant stood charged for the offence punishable under Section 396 of the Indian Penal Code to which he denied and claimed to be tried.

4. In course of trial, prosecution examined altogether five witnesses and also got exhibited certain documents. The statement of appellant was recorded under Section 313 of the Cr.P.C. in which he reiterated his innocence.

5. No evidence was adduced by the appellant in support of his defence but from perusal of statement recorded under Section 313 of the Cr.P.C. as well as trends of cross-examination of prosecution witnesses, it would appear that the appellant denied his participation in the alleged occurrence.

6. Learned trial court having evaluated the prosecution evidence and having relied upon the depositions of P.W. 2, P.W. 4 and P.W. 5, passed the judgment of conviction and sentence order against the appellant.

7. Learned counsel appearing for appellant assailed the impugned judgment of conviction and sentence order arguing that the learned trial court committed error in



appreciating the prosecution evidence as except P.W. 2 and P.W. 4, none of the prosecution witnesses claimed to have seen the appellant participating in the alleged crime and so far as P.W. 2 is concerned, P.W. 2 has, specifically, admitted at para 4 of his cross-examination that the original F.I.R. of the present case was destroyed by the police. He further submitted that the Investigating Officer was not examined by the prosecution and, moreover, the prosecution witnesses, i.e., P.W. 2 and P.W. 4 improved their statements in course of trial. He further submitted that P.W. 2 and P.W. 4 did not disclose the source of light in which they had identified the appellant because, admittedly, the alleged occurrence took place in mid-night and P.W. 2 and P.W. 4 claimed to have identified the appellant while he was outside the house of the appellant. He further submitted that after perusal of entire evidences of prosecution, it is explicit clear that the prosecution failed to prove its case beyond all shadow of reasonable doubt and, therefore, learned trial court committed error in convicting and sentencing the appellant.

8. On the other hand, learned Additional Public Prosecutor supported the impugned judgment of conviction and sentence order arguing that it is a serious case of dacoity with murder and P.W. 2 and P.W. 4 very clearly stated before the trial



court that they had seen the appellant committing alleged crime. He, further, submitted that the presence of P.W. 2 and P.W. 4 on the place of occurrence cannot be disputed because the dacoity had been committed in the house of P.W. 4 and P.W. 2 is neighbour of P.W. 4. He submitted that there is nothing in the entire deposition of P.W. 2 and P.W. 4 on the basis of which their testimonies could be doubted.

9. Having heard the above stated contentions of both the parties, we went through the records along with the lower court records.

10. The questions arise for determination as to whether the learned trial court has properly appreciated the prosecution evidence or not and as to whether the impugned judgment of conviction and sentence order can be confirmed or not.

11. As we have already stated that in course of trial, prosecution examined, altogether, 5 prosecution witnesses but, admittedly, P.W. 1 Ram Sagar Rai, has been declared hostile, whereas P.W. 3 Pradip Das has been tendered by the prosecution, P.W. 2 Dhupan Rai, is full brother of P.W. 1, P.W. 4 Bisheshwar Prasad Sah, is informant whereas P.W. 5 Dr. P.K. Das, who held postmortem examination on dead body of



deceased.

12. P.W. 5 Dr. P.K. Das proved the postmortem report of Bindeshwar Sah, who is brother of informant and according to prosecution case, Bindeshwar Sah had sustained injury by bomb in course of above stated dacoity. The death of Bindeshwar Sah is not in dispute and, moreover, the death of Bindeshwar Sah is confirmed by testimony of P.W. 5 as well as Ext. 3, the postmortem report of deceased Bindeshwar Sah.

13. P.W. 1 Ram Sagar Rai, supports the *factum* of dacoity and claimed to have identified Bijendra Singh, Ram Swarup Singh and Jawahar Sah amongsts the dacoits. This witness also supports this fact that dacoits hurled bomb, which hit the deceased Bindeshwar Sah but this witness states that he could not identify the dacoit, who hurled bomb causing injury to deceased Bindeshwar Sah. According to prosecution case, this witness had sustained injury in the alleged dacoity, therefore, the presence of this witness over the place of occurrence cannot be denied. However, this witness did not name the appellant in his deposition and also failed to identify the appellant in dock.

14. PW 2 Dhupan Rai is full brother of P.W. 1. This witness also supports the *factum* of dacoity and states that he woke up on the sound of breaking of the door and went in his



Phulwari from where he saw Bijendra Singh, who was standing at the door of P.W. 4. This witness claims that at that time aforesaid Bijendra Singh was carrying torch in one hand and pistol in another hand. This witness, further, claims that he also saw appellant Ram Chandra Das, who was carrying bomb in his one hand and bag in his another hand. This witness claimed to have identified the appellant in dock. This witness further claims that Bisheshwar (P.W. 4) and Bindeshwar (deceased) were throwing bricks towards their shop and, in the meantime, appellant Ram Chandra Das hurled bomb on Bindeshwar which hit on the head of Bindeshwar. This witness further claims that dacoits threw bombs from the roof of the house of Bisheshwar Sah and the aforesaid bomb hit to Ram Sagar Rai (P.W. 1) as well as wife of P.W. 4. This witness also disclosed that Bijendra opened fire on P.W. 4 but, luckily, Bisheshwar Sah escaped unhurt. He also disclosed the name of some dacoits and claimed to have identified them at the time of alleged occurrence. The attention of this witness was drawn towards his statement recorded under Section 161 of the Cr.P.C. and this witness claimed that before police, he had claimed to have identified the appellant and also claimed that it was appellant, who was carrying bomb and *Jhola*. This witness further admits that the



first F.I.R. of the case was burnt by police. This witness further claimed that he had made statement before the police that the bomb hurled by appellant caused injury on the head of deceased Bindeshwar Sah. This witness at paragraph 5 of his cross-examination states that the distance between the house of P.W. 4 and the place where his brother sustained bomb injury was about 3-4 *Lagga*. He also admitted that his brother fell towards south side at the distance of two *Lagga* from deceased Bindeshwar Sah.

15. P.W. 4, Bisheshwar Prasad Sah, also supports the *factum* of dacoity. This witness claims that, at the time of alleged dacoity, he was sleeping in his shop and the door of his shop was locked from outside as well as inside. This witness further claims that he woke up having heard the sound of knocking of door. This witness, further, states that his wife Tetri Devi came and asked for opening the door saying that dacoits had entered in their house. This witness, further, states that his house and shop were inter-connected and he opened the door of his shop and, thereafter, his wife and his brother Bindeshwar Sah (deceased) entered in his shop and, at that time, his wife was injured. This witness, further, states that he opened outer door of his shop and came out from the shop and went running



towards brick kiln situated west of his shop. This witness further claims that he as well as his brother Bindeshwar Sah identified Ram Chandra Sah (appellant) and Bijendra Singh, who were present at the door of his shop. This witness also claims that Bijendra Singh was carrying torch in one hand and pistol in another hand and similarly, appellant Ram Chandra Sah was carrying bag in his one hand and bomb in another hand. This witness further claims that he as well as his brother started pelting bricks on the dacoits but, in the meantime, Bijendra Singh opened fire on him. He claims that, luckily, he escaped unhurt. This witness also claimed that he identified Kedar Singh, Ram Swarup Singh, Hardeo Rai and Jawahar Singh amongsts the dacoits. This witness, further, states that some of the dacoits ordered to kill and, thereafter, appellant Ram Chandra Das threw bomb, which hit on the head of his brother Bindeshwar Sah, as a result whereof, his brother Bindeshwar Sah sustained injury. He further states that injured Bindeshwar Sah was taken to Mohiuddin Nagar from where doctor referred to him at Patna but while injured Bindeshwar Sah was being taken to Patna, he succumbed to his injury on way. He also claims that Ram Sagar Rai (P.W. 1) also sustained injury in the alleged dacoity. He also claims that Ram Sagar Rai (P.W. 1)



came with *Lalten* whereas Maheshwar Rai came with torch. He further states that Dhupan Rai (P.W. 2) and Kameshwar Rai came empty hands. The attention of this witness was drawn towards his previous statements and this witness claimed that he had stated before the police that he had seen Bijendra Singh and Ram Chandra Das when they were standing at the gate of his shop. This witness also claimed that he had made statement before the police, to this effect, that appellant Ram Chandra Das was carrying bag in his one hand and bomb in his another hand and on the order of one of the dacoits, appellant Ram Chandra Das hurled bomb which hit to deceased Bindeshwar Sah. This witness very clearly admitted in his cross-examination that his wife had disclosed the name of only Mahendra Rai. This witness, further, states that he had not made statement before the police that his brother sustained injury while he was fleeing from the place of occurrence. This witness also states that the brick kiln was about two hands west from his shop. This witness, further, admitted that his brother sustained injury when he was on the road.

16. On perusal of entire prosecution evidence, it is explicit clear that except P.W. 2 and P.W. 4, none of the prosecution witnesses has stated the name of appellant.



Furthermore, it is apparent from the testimonies of P.W. 1, P.W. 2 and P.W. 4 that the alleged occurrence had taken place in the night at about 1.00 A.M.. Although, P.W. 2 claimed that there was moon light at the time of alleged occurrence but he admitted that he was at the distance of 3-4 *Lagga* from the house of P.W. 4. Neither P.W. 2 nor P.W. 4 disclosed the source of light in which they identified the appellant as well as other dacoits. No doubt, in *fard-e-beyan* P.W. 4 claimed that a *Lalten* was burning in his shop at the time of alleged occurrence but he never disclosed the aforesaid fact before the trial court. Moreover, P.W. 2 and P.W. 4 have, nowhere, claimed that they identified the appellant when the appellant was in shop of P.W. 4 rather P.W. 2 and P.W. 4 claimed that they identified the appellant when he was standing outside the shop of P.W. 4 and, admittedly, there was no *Lalten* on the outside of the shop of P.W. 4 nor there was any source of light. Therefore, in the aforesaid circumstance, the claim of P.W. 2 and P.W. 4 appears to be doubtful.

17. P.W. 2 has admitted at paragraph 4 of his cross-examination that police destroyed the first information report of the present case. The aforesaid admission of P.W. 4 also gets support by this fact that the *fard-e-beyan* of P.W. 4



does not contain the endorsement of registration of police case and only formal first information report contains that the formal first information report has been drawn up on the basis of *fard-e-beyan* of the informant. However, according to prosecution case, the *fard-e-beyan* of P.W. 4 was recorded on 22.3.1983 at about 9.15 A.M. but it is surprising enough that the formal first information report was put up before learned Magistrate on 25.3.1983 and no explanation regarding the aforesaid delay has been given by the prosecution. Apart from this, the Investigating Officer has also not been examined and the appellant could not get opportunity to cross-examine the Investigating Officer on the above stated point as well as on the point of improvements made by P.W. 2 and P.W. 4 in their depositions before the trial court.

18. Therefore, in the aforesaid circumstance, we are of the view that the prosecution could not succeed to prove its case beyond all shadow of reasonable doubts and the impugned judgment of conviction and sentence order cannot be sustained in the eye of law.

19. On the basis of aforesaid discussion, this criminal appeal is allowed and the impugned judgment of conviction and sentence order are, hereby, set aside. The



appellant is acquitted of the charge framed against him. The
appellant is on bail. He is discharged from the liabilities of his
bail bonds.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

Spd/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	22.04.2019
Transmission Date	22.04.2019

