

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.822 of 2013

Arising Out of PS. Case No.-72 Year-2012 Thana- BENIPATTI District- Madhubani

Saroj Thakur @ Saroj Singh @ Saroj Shahi Son of Rajendra Thakur Resident of Village - Sarhachiya, P.S.- Aurai, District- Muzaffarpur

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with
Criminal Appeal (DB) No. 824 of 2013

Arising Out of PS. Case No.-72 Year-2012 Thana- BENIPATTI District- Madhubani

Kundan Kumar Das @ Kundan Kumar Son of Suraj Das Resident of Village - Ram Nagar, Polytechnic Chowk, P.S. Merna, District - Purnea

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with
Criminal Appeal (DB) No. 938 of 2013

Arising Out of PS. Case No.-72 Year-2012 Thana- BENIPATTI District- Madhubani

Lalit Paswan Son of Belai Paswan Resident of Village-Chakauti, P.S. - Nanpur, District - Sitamarhi

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :
(In Criminal Appeal (DB) No. 822 of 2013)
(In Criminal Appeal (DB) No. 824 of 2013)
For the Appellant/s : Mr. Sunil Kumar Pathak, Adv.
(In Criminal Appeal (DB) No. 938 of 2013)
For the Appellant/s : Mr. Ajay Kumar Thakur, Adv.
Md. Imteyaz Ahmad, Adv.
Mr. Pravin Kumar, Adv.

For the Respondent/s : Mr. Ajay Mishra, A.P.P.
(in all the aforesaid appeals)

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
And
HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL
ORAL JUDGMENT



(Per: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL)

Date : 22-02-2019

As the aforesaid three criminal appeals have cropped up from the same judgment and order of conviction and sentence, hence, they are taken up together for consideration and disposed of by this common judgment.

2. Heard Mr. Sunil Kumar Pathak learned counsel for the appellants (in Cr. Appeal (DB) Nos. 822 of 2013 and 824 of 2013) and Mr. Ajay Kumar Thakur, learned counsel assisted by Md. Imteyaz Ahmad, learned counsel for the appellant (in Cr. Appeal (DB) No. 938 of 2013 as well as Mr. Ajay Mishra learned Addl. Public Prosecutor in the aforesaid appeals.

3. The aforesaid three criminal appeals have been preferred against the judgment and order of conviction dated 01.08.2013 and order of sentence dated 03.08.2013 passed by 3rd Additional Sessions Judge, Madhubani in Sessions Trial No. 345 of 2012 arising out of Benipatti P.S. Case No. 72 of 2012 whereby the learned trial court convicted the accused Saroj Thakur @ Saroj Singh @ Saroj Shahi, Lalit Paswan and Kundan Kumar Das for the offence punishable under Sections 395, 397 and 412 of the Indian Penal Code and Section 27 of the Arms Act and sentenced them to undergo life imprisonment and also slapped them with a fine of Rs. 25,000/- each and in default of



payment of fine to further undergo R.I. for six months under Section 395 of the Indian Penal Code, further sentenced them to undergo R.I. for seven years and slapped them with a fine of Rs. 20,000/- each and in default of payment of fine to further undergo R.I. for four months under Section 397 of the Indian Penal Code, further sentenced them to undergo R.I. for ten years and also slapped them with a fine of Rs. 20,000/- each and in default of payment of fine to further undergo R.I. for five months under Section 412 of the Indian Penal Code and also sentenced them to undergo R.I. for five years and also slapped them with a fine of Rs. 10,000/- each and in default of payment of fine to further undergo R.I. for three months under Section 27 of the Arms Act.

4. The factual matrix of the case is that Benipatti P.S. Case No. 72 of 2012 was initially instituted under Sections 395, 397 of the Indian Penal Code and subsequently added with Section 412 of the Indian Penal Code against six unknown miscreants on the basis of written report of Nasurur Rahman Khan S/o Late Badrul Rahman Khan, Branch Manager, Punjab National Bank, Branch Shivnagar, Benipatti Madhubani with the allegation, in succinct that on 15.05.2012 at around 11:30 AM, while the Bank was functioning, 5-6 unknown miscreants



armed with weapon intruded into the Bank and wielding the weapon scared the customers and staffs present in the Bank. Two of them intruded into his cabin and three in the cabin of cashier by breaking open the door of the cabin by leg. They also assaulted the cashier and collected the money from their counter. The person intruded into his cabin also assaulted him. Thereafter, they took him and cashier to the cash-shelf and got it opened forcibly under threat of life. In the meantime, one of the miscreants resorted firing. The accused persons collecting the money kept in the cash-shelf in their bags carried by them and also snatched his Nokia Mobile having SIM of Airtel bearing no. 9771305211 stepped out of the Bank. In the meantime, responding the firing sound, villagers congregated near the Bank and intercepted the miscreants, but they made good their escape exploding bomb and resorting firing on three motorcycles. It is claimed by the informant that the miscreants have committed dacoity of Rs. 46,88,878/- from his Bank. Some of the aforesaid currency notes were bearing the slip of the Bank. They have also committed loot of bait money kept in the Bank. Immediately after departure of the accused persons, police arrived there within short time getting information of the occurrence. The informant has claimed to identify the



miscreants again witnessing them.

5. The aforesaid case was investigated by the police and on conclusion of the investigation, I.O. submitted charge-sheet against Saroj Thakur @ Saroj Singh @ Saroj Shahi, Lalit Paswan and Kundan Kumar Das under Sections 395, 397 and 412 of the Indian Penal Code keeping the investigation pending against rest four accused persons named in the charge-sheet.

6. On receiving the charge-sheet and the case diary and perusing the same, the learned Magistrate took cognizance of the offence and committed the case to the court of sessions, and after commitment and on transfer finally the case came in seisin of the learned 3rd Additional Sessions Judge, Madhubani for trial.

7. Charge against the accused Saroj Thakur @ Rajesh Sahi @ Saroj Singh, Lalit Paswan and Kundan Kumar Das was framed under Sections 395, 397 and 412 of the Indian Penal Code and Section 27 of the Arms Act. Charge was read over and explained to them by the court to which they pleaded not guilty and claimed to be tried.

8. To substantiate its case, in ocular evidence, the prosecution has examined altogether eight prosecution witnesses namely, Surendra Safi, who happens to be Head Cashier of the



Bank as PW-1, Ashish Chandra Jha, who happens to be Accountant-cum-Cashier of the Bank as PW-2, Santosh Kumar Jha, who happens to be Business Promoter of the Bank as PW-3, Laddu Jhas, who happens to be seizure list witness as PW-4, Prabhash Chandra Jha, who happens to be another seizure list as PW-5, informant Nasurur Rahman Khan as PW-6, Shri Vivek Bhardwaj, J.M. 1st Class, Madhubani, who conducted T.I.P. as PW-7 and I.O. Yogesh Chandra as PW-8. The prosecution has also filed and proved some documents by way of documentary evidence in the case.

9. The statement of the accused persons was recorded under Section 313 of the Code of Criminal procedure. The case of the defence is complete denial of the occurrence claiming themselves to be innocent. The accused persons have neither adduced any ocular nor documentary evidence in buttress of their case.

10. After hearing the parties and perusing the record, the learned trial court passed the impugned judgment and order of conviction and sentence as detailed in the earlier paragraph.

11. Being aggrieved and dissatisfied with the aforesaid judgment and order of conviction and sentence, the



convict Saroj Thakur @ Saroj Singh @ Saroj Shahi has preferred Cr. Appeal (DB) No. 822 of 2013, convict Kundan Kumar Das has preferred Cr. Appeal (DB) No. 824 of 2013 and convict Lalit Paswan has preferred Cr. Appeal (DB) No. 938 of 2013.

12. The point for consideration in this case is, as to whether the prosecution has been able to bring home the charges levelled against the appellants beyond all reasonable doubts or not.

13. It is submitted by learned counsel for the appellants that though as per the prosecution case, number of villagers had congregated near the Bank at the time of escaping of the accused persons from the Bank after committing dacoity, but none of the villagers and people of the vicinity has been examined by the prosecution. It is also submitted that currency notes recovered from the possession of the appellants have not been identified. It is also submitted that no injury has been inflicted to the victims at the hands of the appellants during occurrence, hence, no offence under Section 397 is made out. It is also submitted that only three accused persons were apprehended and they were put under the trial and barring aforesaid three accused persons, none other accused was



apprehended and tried, so no offence under Section 395 is made out. It is also submitted that I.O. has not found any mark of explosion of bomb outside the Bank albeit as per the prosecution case, in the course of escaping, accused persons had exploded bomb outside the Bank. It is also submitted that videography was done at the place of recovery and the accused persons were brought into the Bank. Thus, the accused persons were got identified by the witnesses prior to the T.I.P. and on the basis of the aforesaid identification, they have identified the appellants in the T.I.P. Hence, identification of appellants in the aforesaid T.I.P. is not worth credence. In alternative, it is submitted by learned counsel for the appellants that in case of upholding the judgment by this Court, considering the period of occurrence and young age of the appellants, lenient view may be taken in reducing the sentence.

14. On the other hand, learned APP for the State advocating the correctness and validity of the impugned judgment and order of conviction and sentence submitted that it is the specific case of the prosecution that six accused persons intruded into the Bank armed with pistols and committed dacoity. Witnesses have unanimously stated about committing dacoity by six accused persons and assaulting informant and



head cashier by the accused persons during course of committing dacoity in Bank, hence, offence under Sections 395 and 397 I.P.C. stands fully established. It is further submitted that looted money and mobile of informant were recovered from the possession of the appellants soon after the occurrence giving them chase by the police and the villagers, and the appellants were identified by the informant and staff of the Bank in the T.I.P. and seized currency notes and mobile phone were identified by the informant and the learned trial court correctly appreciating the facts and evidence on record has rightly passed the impugned judgment and order of conviction and sentence which is liable to be upheld and these appeals are shorn of merit and are liable to be dismissed.

15. From perusal of testimony of the informant (Nasurur Rahman Khan), who happens to be Branch Manager of P.N.B., Branch Shivanagar, Madhubani, PW-1 (Surendra Safi), who happens to be Head Cashier of the Bank, PW-2 (Ashish Chandra Jha), who happens to be Accountant-cum-Cashier of the Bank and PW-3 (Santosh Kumar Jha), who happens to be Business Promoter deputed in the said Branch, it appears that they have unanimously stated in their respective examination-in-chief in consonance to the prosecution case as adumbrated in



the written report that at the time of occurrence, they were present at the Bank and they were engaged in their respective works. In the meantime, six accused persons armed with pistol intruded into the Bank. Two of them intruded into the cabin of the informant while three intruded into the cabin of cashier by breaking open the door of the cabin by leg and looted the money kept on the counter of the cashier and collected in their bags carried by them. They also assaulted the informant and cashier. Thereafter, they took the informant and the cashier of the Bank to the cash-shelf and forcibly under threat of life got it opened and looted the money kept in the shelf and collected the same in the bag carried by them. They also damaged CCTV camera, computer and phone of the Bank and snatched the mobile of the informant having SIM of Airtel bearing no. 9771305211. The miscreant standing outside the cabin in the premises of the Bank was scaring the people present at the Bank by pistol. After plundering the money of the Bank to the tune of Rs. 46,88,878/-, they decamped with the booty on three motorcycles exploding bomb outside the Bank. They have identified the appellants involved in the occurrence in T.I.P. The aforesaid witnesses have also identified the appellants witnessing them in the dock of the court. The aforesaid witnesses were subjected to



grueling cross-examination, but from perusal of their cross-examination, we find that nothing cogent and convincing has been elicited in their cross-examination having potential to rule out their presence at the place of occurrence at the time of occurrence and witnessing the occurrence by them. They have faced the cross-examination tenaciously and stood the test of cross-examination.

16. After the occurrence on getting information of the occurrence, police arrived at the place of occurrence within short time and gave chase to the miscreants along with the villagers and PW-4 and PW-5. From perusal of testimony of PW-4 (Laddu Jha) and PW-5 (Prabhash Chandra Jha), who happen to be seizure list witnesses, it appears that the aforesaid witnesses have unanimously stated that police gave chase to the miscreants taking them and other villagers by Jeep to some distance and then on the bike of private person as further road was narrow and not motorable. During the course of chase, accused Kundan Kumar Das was apprehended as he fell down from the bike in the course of escaping and from his possession, the police recovered and seized currency notes of Rs. 4 lacs and mobile phone of the informant having SIM of Airtel bearing no. 9771305211. Thereafter, on the disclosure of Kundan Kumar



Das, police further proceeded in search of other accused persons giving them chase and apprehended the appellants Saroj Thakur and Lalit Paswan after giving hot chase and recovered and seized Rs. 39,41,000/- and one mobile phone from the possession of Saroj Thakur, and Rs. 43,680/- and Black Colour Pulsar motorcycle from the possession of Lalit Paswan and prepared the seizure list before the witnesses. The aforesaid witnesses have identified their signature on the seizure list marked as Ext-1 and Ext-1/1 respectively. The aforesaid two seizure lists have also been exhibited as Ext-4 and 4/1 respectively. They have also identified the appellants in the T.I.P. and have also identified them in the dock of the court. Said witnesses were also subjected to grueling cross-examination, but from perusal of their cross-examination, we find that nothing cogent and convincing has been elicited in their cross-examination to discredit their testimonies. They also stood the test of cross-examination.

17. The aforesaid three accused persons were put on T.I.P. in the Sub-Divisional Jail, Madhubani. The aforesaid T.I.P. was conducted by Shri Vivek Bhardwaj, J.M. 1st Class, Madhubani in the jail premises itself. During the course of T.I.P. the appellants Kundan Kumar Das and Saroj Thakur were



identified by the informant (PW-6) and witnesses Surendra Safi (PW-1), Santosh Kumar Jha (PW-3), Prabhash Chandra Jha (PW-5) and Laddu Jha (PW-4) while appellant Lalit Paswan was identified by the informant (PW-6) and witnesses Santosh Kumar Jha (PW-3), Prabhash Chandra Jha (PW-5) and Laddu Jha (PW-4). The aforesaid witnesses in their respective examination-in-chief have also stated about identification of the aforesaid accused persons by them in the T.I.P. in the jail premises. Said Magistrate, namely, Shri Vivek Bhardwaj, has also been examined by the prosecution as PW-7 and he has also stated about conducting the T.I.P. of the appellants in the jail premises and identification of the appellants by the aforesaid witnesses before them. He has also stated that the appellants were got identified by making them stand along with nine other persons separately, meaning thereby that entire T.I.P. was conducted in due process. He has proved test identification parade charts marked as Ext-3, 3/1, 3/2, 3/3, 3/4 and 3/5 respectively.

18. The currency notes recovered from the possession of the appellants were also identified by the informant. Some of the aforesaid currency notes were having seal of P.N.B. Branch Shivnagar, Benipatti Madhubani and some



of the currency notes having seal of Branch Darbhanga.

19. From perusal of testimony of I.O. Yogesh Chandra (PW-8), it appears that I.O. has also seized three cartridges and magazine from the premises of the Bank and prepared the seizure list marked as Ext-6. He has also found mark of firing on the ceiling of the Bank. Seized currency notes and mobile were got identified by the informant.

20. Thus, from perusal of aforesaid evidence of the prosecution and aforesaid aspects of the case, it appears that the appellants along with three other miscreants had intruded into the Bank armed with pistol and assaulting the Cashier and Manager looted cash of Rs. 46,88,878/- from the Bank and mobile of the informant resorting firing and scaring the Bank staff and the customer present in the Bank. Immediately after the occurrence, the appellants were apprehended by the police and villagers giving them chase and looted money and mobile of the informant were recovered and seized from their possession which were identified by the informant. The appellants were identified by the informant and PW-1, PW-3, PW-4, PW-5 in T.I.P conducted in the premises of Sub-Divisional Jail, Madhubani by the J.M. 1st Class, Madhubani. Magistrate conducting the T.I.P. has also proved the factum of conducting



T.I.P. by him in the jail premises and identification of the appellants indulged in the occurrence by the witnesses before him.

21. As the appellants have committed Bank dacoity in the broad daylight and looted huge amount of public coffer from the Bank, in our considered opinion, they do not deserve any reduction in the sentence passed by the learned trial court.

22. Having regard to the facts and circumstances of the case and discussions made by us hereinabove, we find that the prosecution has succeeded to substantiate its case beyond all reasonable doubt by adducing consistent, trustworthy, convincing and reliable evidence. Hence, the aforesaid judgment and order of conviction passed by the learned trial court does not warrant any interference by this Court and is accordingly upheld. Accordingly, the aforesaid three Criminal Appeals are dismissed.

(Rakesh Kumar, J)

(Prakash Chandra Jaiswal, J)

rohit/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	01.03.2019
Transmission Date	01.03.2019

