

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.674 of 2015

Arising Out of PS. Case No.-130 Year-2012 Thana- JHAJHA District- Jamui

Ashok Yadav, Son of Bhikhani Yadav, Resident of Village- Dighra, P.S.-
Jhajha, Dist- Jamui.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

Criminal Appeal (SJ) No. 780 of 2015

Arising Out of PS. Case No.-130 Year-2012 Thana- JHAJHA District- Jamui

Shambhu Ravidas @ Das, Son of Jamuna Ravidas, resident of village- Tardih
P.S. Gidhaur, District- Jamui.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

(In Criminal Appeal (SJ) No. 674 of 2015)

For the Appellant/s : Mr. Prabhat Ranjan Singh-Advocate

For the Respondent/s : Mr. Binod Bihari Singh-A.P.P.

(In Criminal Appeal (SJ) No. 780 of 2015)

For the Appellant/s : Mr. Pankaj Kumar Sinha-Advocate

For the Respondent/s : Mr. Bipin Kumar-A.P.P.

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
CAV JUDGMENT

7-03-2019

Cr. Appeal (S.J.) No.674 of 2015 wherein Ashok

Yadav is the appellant and Cr. Appeal (S.J.) No.780 of 2015

wherein Shambhu Ravidas @ Das is the appellant have been

heard analogously as both the appeals arise out from common

judgment of conviction and sentence dated

03.08.2015/04.08.2015 passed by the 1st Additional District &

Sessions Judge, Jamui in Sessions Trial No.350 of 2013 arising



out of Jhajha P. S. Case No.130 of 2012, whereby and whereunder both the appellants have been found guilty for an offence punishable under Section 364/34 of the I.P.C. and each one has been sentenced to undergo R.I. for ten years as well as to pay fine appertaining to Rs.5,000/- and in default thereof, to undergo S.I. for one year, additionally, under Section 392/34, 120B of the I.P.C. and for that, each one has been sentenced to undergo R.I. for seven years as well as to pay fine appertaining to Rs.4,000/- and in default thereof, to undergo S.I. for six months, additionally, respectively, with a further direction to run the sentences concurrently, with a further direction to set off the period having undergone during course of trial in accordance with Section 428 of the Cr.P.C. and are being decided by a common judgment.

2. So far intermediary events are concerned, that has been thoroughly detailed under Cr. Appeal (S.J.) No.670 of 2017 having been filed on behalf of appellant Shiv Nandan Yadav @ Shiva, who faced separate trial bearing Sessions Trial No.350A of 2013, on account of his initial absence and in the aforesaid background, the judgments are being pronounced on the same day, though separately.

3. Informant, Manoj Kumar Mandal (PW-9) filed



written report on 14.09.2012, depicting therein that he happens to be Incharge Headmaster at Primary School at Chaukijor lying under Jhajha Block. Today i.e. 14.09.2012 at about 2.30 P.M. he, after closing the school, was returning to his house over his Splendor Plus Motorcycle bearing Registration No.BR-46A-4841 and reached at Chhena Mor behind the Nagi Dam at about 2.50 P.M., three criminals ridden over motorcycle having duly armed appeared, dashed against his motorcycle, whereupon he fell down. They assaulted and then thereafter, one of them opened his helmet to put over his head whom, he identified as Nandan Yadav, son of not known of village-Ketru. He has also identified his associate as Ashok Yadav and Mukesh Yadav. He also disclosed that because of the fact that their houses lie at some distance from his house, on account thereof, he was identifying them since before. Then thereafter, they tied his eyes by a cloth strip and then, put helmet and then, got him seated in between over motorcycle, pointed pistol towards him and said that provide Rs.10,00,000/- (ten lacs), otherwise he will be murdered. They have also snatched away his motorcycle, Micro Max mobile having SIM No.9431059720, 9661352563. When they proceeded along with him and reached at village-Lahernian Tand, all of a sudden, the cloth strip by which his eyes were



tied, slipped as a result of which, he has seen so many villagers over the road, whereupon, he began to shout. The villagers after hearing the same, chased as a result of which, the driver Nandan Yadav lost his balance, and all of them fell down. Villagers arrived and caught hold of one of the culprits Ashok Yadav and also seized his motorcycle while Nandan Yadav managed to escape on the point of pistol. They have also succeeded in taking away the attendance register of the school, passbook, cheque book etc., which was kept in dicky of his motorcycle. Then thereafter, police was informed and after his arrival, the apprehended accused along with motorcycle has been produced.

4. After registration of Jhajha P. S. Case No.130 of 2012, the investigation proceeded during course thereof, as is evident, motorcycle has been recovered from the possession of one of the appellants namely Shambhu Ravidas @ Das and further, after concluding the investigation, chargesheet were submitted only against Mukesh Yadav, Shambhu Ravidas @ Das and Ashok Yadav. Because of the fact that there was absence of accused Nandan Yadav on account thereof, his trial was bifurcated and then thereafter, the trial proceeded against these accused persons out of whom, appellants have been convicted while Mukesh Yadav has been acquitted, subject



matter of instant appeal.

5. Defence case, 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. It has further been submitted that appellants have been victimized on account of prevailing caste politics, which itself is found corroborated from the fact that having known since before on account of their houses nearby to the house of the informant, none of them have tried to conceal their identity. Furthermore, the land of accused/appellant lie in his village, which has been sold to others declining the offer at the end of prosecution party. So far Shambhu Ravidas is concerned, it has been pleaded that members of the prosecution party misbehaved with his sister for which, complaint case has been filed. Hence, he has been falsely implicated.

6. In order to substantiate its case, prosecution has examined altogether ten PWs, who are PW-1, Naresh Yadav, PW-2, Bajrangi Yadav, PW-3, Upendra Yadav, PW-4, Kapil Yadav, PW-5, Dilip Kumar, PW-6, Raj Kumar Ranjan, PW-7, Upendra Narayan Mandal, PW-8, Bikram Kumar Vikas, PW-9 Manoj Kumar Mandal and PW-10, Shatrughan Kumar. Side by side, has also exhibited signature of Seizure list witnesses under



Exhibit-1 series, seizure list as Exhibit-2, written report as Exhibit-3, endorsement over the written report as Exhibit-3/1, formal F.I.R. as Exhibit-4, chargesheet as Exhibit-5, supplementary chargesheet as Exhibit-6, certified copy of F.I.R. of Jhajha P. S. Case No.48 of 2013 as Exhibit-7. As stated above, no ocular evidence has been adduced on behalf of defence. However, complaint petition of Case No.378 of 2013 filed by Mala Devi has been made an Exhibit-A.

7. The learned counsel for the appellants while assailing the judgment impugned has submitted that the learned lower Court has passed the judgment impugned in mechanical manner without appreciating the circumstances in its right perspective as well as the improbability, inconsistency existing in the prosecution case. Also submitted that the learned lower Court has completely overlooked the infirmities, exaggeration having in the evidence of the witnesses going to the root of the case.

8. In order to support such plea, it has been submitted that none of the witnesses coming from Lahernian Tand has come forward to support the case of the prosecution. That means to say, the authenticity of the prosecution with regard to seizure as well as apprehension of one of the



appellants Ashok Yadav there from became suspicious. That has got relevancy in the background of the fact that the seizure list (Exhibit-2) relating to a motorcycle without number plate was seized by the police on being produced by the informant (PW-9) Manoj Kumar Mandal bore signature of only PW-9 as well as his two brothers, but the same without having presence of persons of Lahernian Tand does not bear signature/ L.T.I. of the appellant Ashok Yadav and as I.O. (PW-10), during course of evidence failed to enlighten, on account thereof, genuineness suffers from ambiguity casting doubt over prosecution version.

9. Furthermore, it has also been submitted that so far complicity of appellant Shambhu Ravidas @ Das is concerned, he has not been found associated, but to connect therewith certified copy of F.I.R. of Jhajha P. S. Case No.48 of 2013, has been filed in order to support recovery of so alleged stolen motorcycle belonging to the informant, whereupon it has been submitted that for want of seizure list as well as connectivity with regard to the alleged seized motorcycle to be the subject matter of instant case in the background of the fact that informant had specifically disclosed the registration number of his motorcycle bearing Registration No.BR-46A-4841, while the motorcycle so seized from his possession borne Registration



No.JH-10C-9559 and during course of evidence, I.O. (PW-10) failed to interconnect the same. Hence, there happens to be no evidence against the appellant Shambhu Ravidas @ Das.

10. Then, it has been submitted that whoever now remains as a prosecution witness, PW-5 and PW-6, own brothers of the informant (PW-9) having their appearance after commission of the alleged occurrence and the PW-9 is informant himself along with PW-10, the main I.O. PW-7 is the formal witness though relative of PW-9, who has admitted his presence over seizure list. Challenging the presence of PW-5 and PW-6, it has been submitted that there happens to be specific disclosure in the written report as well as in the evidence of PW-9 that his mobile along with documents, motorcycle were taken away. Then in that event, how PW-9 has been able to inform PW-5 and PW-6, found unexplained and in likewise manner, the inconsistency amongst their evidence as PW-5 had stated that he after receiving telephonic information, gone to the place of PW-6 and then, both of them came to the Place of occurrence. When the surrounding circumstances so prevailing is minutely gone through, it is apparent that no such kind of incident has ever taken place. All the grievances have been procured by the informant taking the police in his collusion



only to teach a lesson as the appellants declined to sell land to him. Otherwise the I.O. during course of investigation ought to have traced out status of seized motorcycle whether it belonged to appellants or was a stolen one. On the other hand, the I.O. during course of evidence, kept mum over the same. That being so, the judgment of conviction and sentence recorded by the learned lower Court is fit to be set aside.

11. On the other hand, learned Additional Public Prosecutor while controverting the submissions made extraneous effort to justify the finding recorded by the learned lower Court and submitted that apprehension of Ashok Yadav by the police on account of having been handed over by the villagers along with motorcycle is not at all denied and in likewise manner, presence of informant. That being so, the case of the prosecution is found duly admitted at the end of the appellants by way of their conduct. In likewise manner, it has not been pleaded at the end of the appellant Shambhu Ravidas @ Das that he was not arrested by the police while in possession of stolen motorcycle.

12. So far status of the witnesses are concerned, all the witnesses belonging to Lahernian Tand have gone volte face to the prosecution. That means to say, PW-1, PW-2, PW-3, PW-



4 and PW-8 have been declared hostile. The prosecution could not be able to extract substantial in their favour even during cross-examination of those PWs. So, now remains evidence of PW-5, PW-6 and PW-9 on material aspect. PW-7 is formal only admitting his presence over seizure list, as being relative, he came at the P.O. after hearing about incident. It is needless to say that PW-9 is the informant and PW-5 and PW-6 are his brothers whose arrival admittedly happens to be after the occurrence on being informed by the PW-9. PW-10 is the main I.O.

13. PW-9, the informant has deposed that on 14.09.2012 at about 2.30 P.M. while he was coming to Gidhaur over his motorcycle bearing Registration No.BR-46A-4841 after closing school and as soon as reached at Chhena Mor, one motorcycle having occupied by three criminals having duly equipped with arms, dashed from behind as a result of which, he fell down. Thereafter, Nandan Yadav on the pretext of pistol directed him to remain idle. Thereafter, Ashok Yadav gave 8-10 fist blow over his mouth. He silently got up. Ashok Yadav, took out cloth strip from his pocket and then, tied his eye. Nandan Yadav handed over his helmet to Ashok Yadav and said to put it over him, which he did. Thereafter Nandan Yadav directed him



to seat over the vehicle. It was pursar black colour motorcycle. Nandan Yadav began to drive while he was sitting in the middle and Ashok Yadav was extremely behind. During midst of way, Nandan Yadav said that he will realize Rs.Ten Lacs from his family as well as he will also cause his murder. They also proceeded in the same direction in which he was coming. When they crossed Lahernian Chowk, he caught hold Nandan Yadav in such manner as a result of which, he lost balance. They all have fallen from the motorcycle. Thereafter, he raised alarm attracting the villagers. He removed helmet as well as strip and then, saw Nandan Yadav and Ashok Yadav fleeing with firearm. NandanYadav succeeded in his escape while Ashok Yadav was apprehended. His motorcycle remained at Chhena Mor. In the dickey of the vehicle, all the records, registers, passbook, cheque book relating to activity of the school remained, which he could not get up-till-now. He informed his brother from Lahernian Mor, who came within 20-25 minutes. After half an hour and half and one hour, police came from Jhajha. His fard-bayan was recorded by the O/c, seizure list was prepared and then, he along with accused Ashok Yadav and motorcycle were taken to police station. He got his motorcycle after six months, identified the accused. He has not claimed identification of



accused Mukesh Yadav. During cross-examination at Para-2, he has stated that his school was running from 9.00 A.M. to 3.00 P.M. at that very time. In Para-3, there happens to be denial at his end that the school timing was from 9.00 A.M. to 4.00 P.M. He has further stated that after informing the Secretary orally, he left the school, but Secretary has not turned up before the I.O. to substantiate the same. Then there happens to be cross-examination with regard to the financial activity of the school under Paras-4, 5, 6 and 7. In Para-8, he has stated that due to fall at Chhena Mor, he had sustained injury at his hand. He has further stated at Para-9 that he had not got himself examined by a doctor relating to assault having over his face. In Para-10, he has stated that accused persons have not tried to conceal their face. In Para-11, he has stated that the cloth strip was 6-7 Inch in breadth and about 24 Inch (1- ½ hands in long). He had handed over the same to the police, but he is unable to say whether any document was prepared thereto or not. In Para-12, there happens to be cross-examination relating to Chhena Mor, Lahernian Mor. He has further stated that he has handed over the helmet to the police, which was seized by the police. He has further stated that after coming to know about the incident, 20-25 teachers have also come. In Para-13, he has named some of them (none



of them are witness of the case). In Para-14, he has stated that he had requested the bank officials to cancel the lost cheque book and a copy thereof, was handed over to the I.O. In Para-15, he has stated that he requested for issuance of another cheque book, but he is not re-collecting whether I.O. was informed or not. In Para-17, he has stated that police was informed by his brother Dilip Kumar. He had informed Dilip Kumar. He has further stated that his house lies near Gidhaur Police Station. At Para-11, he has denied the suggestion that in order to digest the government money, which he got as a teacher of the school, this case has falsely been filed. In Para-19, there happens to be contradiction. In Para-20, he has stated that he met with Shambhu Ravidas @ Das at Police Station about 5-6 months, when his vehicle was recovered. In Para-22, he denied the suggestion that he along with others tried to rape sister of Shambhu Ravidas @ Das and for that, Complaint Case No.378C of 2013 was filed and only to save their skin, got him roped in this case.

14. PW-5 is Dilip Kumar, brother of the informant. He has stated that he received information through another mobile with regard to kidnapping of his brother while he was returning from the school. They have gone to that place where



they have called upon. After reaching there, they have seen Ashok Yadav having been apprehended by the villagers. His brother was also there. One Pulsar motorcycle black in colour was also there. Villagers were making query from Ashok Yadav, who made inculpatory extra-judicial confession implicating he himself, Mukesh Yadav and Nandan Yadav. Police had prepared seizure list relating to the motorcycle, over which he had put his signature identified, identified the accused. During course of cross-examination, he has admitted the informant to be his full brother. He also claimed to be teacher at the middle school. He has also disclosed running of school upto 3.00 P.M. He has denied the suggestion that school used to close at 4.00 P.M. on that, he replied that after closure of the school at 3.00 P.M., they have to move in all village for an hour in order to promote and persuade the guardians to get their wards admitted at their school. He has further stated that after receiving information, he had gone to Gidhaur and then, accompanied mother, brother to the P.O. He has further stated that on his information, police came. In Para-3, he has stated that his statement was not recorded before the police. He has further admitted that the land of accused persons were in his village. At before the occurrence, those lands were already sold away. Then, again clarified that



land of Mukesh Yadav and Ashok Yadav are in his village. Then has stated that five acre lands of Antu Yadav lies adjacent to his house. Then has denied the suggestion that as they were inclined to purchase the same wherein they could not succeed as a result of which, this case has been instituted.

15. PW-6 is the another brother of the informant, who has deposed that on 14.09.2012, he was at Gidhaur. His elder brother came from school and disclosed that Manoj Yadav has been kidnapped, so they have to go to Lahernian tand. They have gone there. After arrival, they have seen his brother as well as Ashok Yadav, the accused along with pulsar motorcycle. He had seen one helmet black colour. He had also seen the cloth strip by which eyes of his brother was tied. His brother had disclosed that three persons have kidnapped him, whose name disclosed as Nandan Yadav, Ashok Yadav, Mukesh Yadav. He has further stated that his brother had disclosed that on account of having the strip removed, he began to see and during course thereof, found so many persons, whereupon he raised alarm attracting the persons, who chased and caught hold of accused. During cross-examination at Para-2, he has stated that he had not seen the occurrence. He has further stated that when his brother had disclosed regarding the occurrence, none was



present. He has further stated that Thana is nearabout his house, but he has not informed the Thana. Then, there happens to be cross-examination relating to distance of Mahuli, Lahernian Mor etc. In Para-3, he has stated that when he reached at the P.O. till then, police had not reached there. Who informed the police, he was not knowing. Police came 5-10 thereafter. About 100-200 persons were there including the teachers. In Para-4, there happens to be contradiction. In Para-5, he has stated that he knew Antu Yadav, who is father of Mukesh Yadav. He has further stated that Mukesh Yadav and Ashok Yadav had not given land to him. Then has denied the suggestion that because of the fact that they have not given land to them on account thereof, they have been falsely implicated.

16. PW-10 is the I.O. During his examination-in-chief, has stated that he was posted as A.S.I. at Jhajha Police Station on 14.09.2012. On that day, he received information to the fact that somebody has been kidnapped by the miscreants and during course thereof, one of the accused has been apprehended by the villagers at Lahernian Tand, whereupon he along with O/c, other police officials, armed forces came at Lahernian Tand where victim Manoj Kumar Mandal filed written report before the O/c Gidhaur. The villagers also



produced the accused as well as one pulsar motorcycle and for that, production-cum-seizure list was prepared (Exhibited). As per direction, he took up investigation and during course thereof, took further statement of the victim. Inspected the P.O., the first P.O. happens to be the Chhena Mor and detailed the same. P.O. is a lonely place. He recorded statement of witnesses Naresh Yadav, Kapil Yadav, Dilip Kumar, Upendra Narayan Mandal, Bajrangi Yadav, Upendra Yadav, Raj Kumar Ranjan, Bikram Kumar Vikrant. He had apprehended Mukesh Yadav from his house, received supervision report and then, submitted chargesheet against Ashok Yadav and Mukesh Yadav keeping the investigation pending against Nandan Yadav and Shambhu Ravidas @ Das. In due course of time, he had submitted chargesheet against them also (Exhibited). During cross-examination, he has stated at Para-2 that there happens to be no description in the CD with regard to entry in the Station Diary. In Para-3, he has stated that none of the villagers of Lahernian Tand is a witness of production-cum-seizure list. Though, the same was produced by them. He has further stated that he had taken statement of the informant only. He has not obtained his signature over the same. In Para-4, he has stated that he had not taken signature over the production-cum-seizure list. Again



corrected by way of stating that motorcycle was not produced by the villagers of Lahernian Tand. He has further stated that a copy of production-cum-seizure list was not given to the accused. In Para-9, he has stated that he has not investigated over status of the seized motorcycle. In Para-12, he has stated that he had not seized the cloth strip, helmet. Informant had not produced the same. He had not inquired whether informant had attendance at the school or not. In Para-13, he has stated that the house of informant lies by the side of Gidhaur Police Station.

17. After going through the evidences as discussed hereinabove, it is evident that the I.O. had not investigated over proper identity of the so alleged seized motorcycle. Although, there happens to be signature of the informant over the production-cum-seizure list, but from perusal of the same, it is evident that neither there happens to be signature of the accused over the same nor a copy thereof was served upon the accused. Apart from this, it is also evident from his evidence that no helmet as well as cloth strip was handed over by the informant, nor deposed anything concerning the same. It is further evident that none of the villagers have their presence nor during course of evidence they supported.

18. Now, coming to the evidence, it is evident from



the evidence of PW-9, informant that there happens to be specific disclosure at his end that he had seen Ashok Yadav and Nandan Yadav running away brandishing pistol, out of whom, Nandan Yadav succeeded in his escape while Ashok Yadav was apprehended by the villagers. He had not claimed his involvement during course thereof. None of the villagers inclined to support the case of the prosecution on that very score, whereupon they all were declared hostile. Furthermore, there happens to be no disclosure at the end of the informant about the firearm having in the hand of Ashok Yadav. In likewise manner, I.O. had not spoken over presence of firearm.

19. PW-5 and PW-6 are certainly not an eye witness to occurrence. PW-5 had not spoken with regard to source, however, PW-6 had. When their evidences have been gone through, it is evident that their testimony is unappealable.

20. The aforesaid eventuality is found mysterious one in the background of the fact that there happens to be own admission at the end of the I.O. that he had not investigated with regard to the motorcycle. Furthermore, it is also evident from the evidence of I.O. that there happens to be inconsistency, who had produced the accused Ashok Yadav along with motorcycle as during cross-examination, he disowned having been produced



by the villagers of Lahernian Tand. Informant and his brother has not claimed that they have produced Ashok Yadav.

21. None had spoken with regard to recovery of the motorcycle. Informant had stated that when he had gone to the police station about 6-7 months after the occurrence, he had seen the accused Shambhu Ravidas @ Das. He had not spoken that his motorcycle was recovered from his possession. At the present moment, the certified copy of Jhajha P. S. Case No.48 of 2013 having made an Exhibit-7 has been gone through. It is evident there from that from the possession of Shambhu Ravidas @ Das, a motorcycle bearing Registration No.JH-10C-9559 (Hero Honda Splendor) was seized, but there happens to be no disclosure that during course of investigation, the aforesaid registration of the seized vehicle was found fake, the real registration of the seized vehicle was BR-46A-4841, belonging to the informant, search-cum-seizure list allegedly prepared for the same, is also not brought on the record, nor the seizure list witness, relating thereto have been examined.

22. Furthermore, as is evident, informant (PW-9) tried to disown the land of the accused persons having in his village, which his brothers have admitted. After anxious consideration to the facts and circumstances of the case as



emerging there from, the judgment impugned did not justify its proprietary. Consequent thereupon, the same is set aside. Both the Appeals are allowed. Appellants are on bail, hence are discharged from its liabilities.

(Aditya Kumar Trivedi, J)

vikash/-

AFR/NAFR	A.F.R.
CAV DATE	29.01.2019
Uploading Date	07.03.2019
Transmission Date	07.03.2019

