

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.2234 of 2018

Arising Out of PS. Case No.-110 Year-2007 Thana- UDAKISHUNGANJ District-
Madhepura

=====

Ratan Yadav S/o Late Shiv Narayan Yadav, R/o Vill.- Singhyan, P.S.-
Murliganj, District- Madhepura. Appellant/s

Versus

The State Of Bihar Respondent/s

=====

with

CRIMINAL APPEAL (SJ) No. 2727 of 2018

Arising Out of PS. Case No.-110 Year-2007 Thana- UDAKISHUNGANJ District-
Madhepura

=====

Vimal Yadav S/o Late Shiv Narayan Yadav, R/o Vill.- Singhyan, P.S.-
Murliganj, District- Madhepura. Appellant/s

Versus

The State Of Bihar Respondent/s

=====

Appearance :

(In CRIMINAL APPEAL (SJ) No. 2234 +2727 of 2018)

For the Appellant/s	:	Mr.Praveen Kumar Agrawal Smt. Kumari Sudha Singh, Mr. Santosh Kumar Singh, Advocates.
For the Respondent/s	:	Mr.Sri Sujit Kumar Singh Mr.Sri Bipin Kumar, APPs

=====

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

03-07-2019

Both these Criminal Appeals originate out of common judgment of conviction dated 16.05.2018 and order of sentence dated 21.05.2018 passed by FTC-1, Madhepura in Sessions Trial No. 26 of 2010/1927 of 2013 arising out of Udakishunganj PS Case No. 110/2007 whereby and whereunder appellant, Ratan Yadav [Cr. Appeal (SJ) No. 2234/2018] and Vimal Yadav [Cr. Appeal (SJ) No. 2727/2018] have been found guilty for an offence punishable under Section 412 IPC and each one has been sentenced to undergo RI for seven years.



2. Informant, Kumari Sheela Rani (PW 3) gave her Fardbeyan on 15.10.2007 disclosing therein that she happens to be a dealer of K-oil and so was going to deposit Rs. 2,56,000/- in the bank. As soon as she proceeded over rickshaw, one miscreant came and gave a punch over her nose and attempted to snatch away the bag which she resisted and during course of grappling, she fell down from the rickshaw. At that very moment, another miscreant came over Rajdoot Motorcycle having no registration number, snatched away the bag and then both of them slipped over motorcycle. They were joined by others over different motorcycle. People assembled, chased but on account of firing at the end of miscreants, they could not succeeded.

3. After registration of Udakishunganj PS Case No. 110/2007, investigation commenced and as is evident from the possession of these two appellants Rs. 9200/- has been seized on 18.10.2007 whereupon, apart from Section 395 IPC, under Section 412 IPC also, charge-sheet has been submitted, facilitating the trial which concluded by recording acquittal with regard to the charge under Section 395 IPC but under Section 412 IPC, the appellants have been found guilty and accordingly, sentenced.



4. Defence case as is evident from the mode of cross-examination as well as statement recorded under Section 313 CrPC is that of complete denial. Furthermore, appellants have claimed the aforesaid recovered amount and for that, three DWs have been examined.

5. In order to substantiate its case, prosecution has examined three PWs i.e. PW-1, Rama Devi, PW-2, Nageshwar Mandal, PW-3, Sheela Devi. Prosecution has also exhibited, Ext-1, Signature of the informant over Fard-beyan and Ext-2, receipt so granted by the informant against the receipt of Rs. 9200/-. Side by side, three DWs have been examined on behalf of defence, namely, DW-1, Kailash Pd. Yadav, DW-2, Bhupendra Yadav, DW-3, Ashok Kumar and has also exhibited a certificate granted by Mukhiya, Sarpanch (DW-2 as well as DW-3) as exhibit, A.

6. Now coming to the status of witnesses, PWs- 1 and 2 have been declared hostile as they flatly refused to say anything about the occurrence. So far PW-3 is concerned, she happens to be the informant and during course of examination-in-chief she has not claimed identification of the accused persons as a culprit whereupon, all have been acquitted for an offence punishable under Section 395 IPC. Now remains the



controversy with regard to applicability of Section 412 of the IPC. From the evidence of PW-3, it is evident from para-1, last part and para-2, upper part, that she had not shown any kind of specific mark against the currencies which were looted away nor serial number. As against the same, she has stated that police had disclosed her that Rs. 9200/- has been recovered from the possession of a person who was brought at police station whereupon, she identified the culprit. But, she failed in court. Contrary to it, she has not explained, how she has been able to identify the amount.

7. It has also been disclosed in para-2 that she had gone to participate in the TIP and identified the money whereupon the aforesaid amount was released in her favour by the police in presence of BDO. Neither I.O nor BDO has been examined nay the prosecution has cared to have signature of this witness over TIP chart, if any, exhibited. That means to say, whether any TIP was conducted or not, has become under controversy, more particularly, in the background of the fact that without taking permission from the court, the I.O. had released the same in favour of petitioner that too without any undertaking that the aforesaid notes were to be produced before the court during course of trial as and when so required and that being so,



the aforesaid notes have not been produced in the court. On the other hand, due to non-examination of the I.O., seizure list witnesses, the factum of recovery is found completely blurred and in likewise manner, the theme of identification as prima facie the prosecution is under obligation to say that the seized article happens to be booty.

8. That means to say, the prosecution evidence is found deficient one over connectivity of the recovered amount of Rs. 9200/- (if any) to be the subject matter of dacoity whereupon the judgment impugned would not survive. Consequent thereupon, the judgment impugned is set aside. Both the appeals are allowed.

9. Since both the appellants are under custody, they are directed to be set at liberty forthwith, if not wanted in any other case.

(Aditya Kumar Trivedi, J)

perwez

AFR/NAFR	AFR
CAV DATE	NIL
Uploading Date	08.07.2019
Transmission Date	08.07.2019

