

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No. 764 of 2018

Arising Out of P.S. Case No.-64 Year-2017 Thana- GHOSHI District- Jehanabad

Manish Kumar, Son of Krishna Paswan, Resident of Village- Alagna, P.S.-
Kako, District- Jehanabad.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Kiran Devi, Wife of Deepak Lal, Resident of Village-Rasisa, P.S.-
Ekangarsarai, District- Nalanda.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Ajay Kumar Sinha, Advocate
For the Opposite Party/s	:	None
For the State	:	Mr. Jharkhandi Upadhyay, APP

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH

ORAL JUDGMENT

Date : 19-09-2019

Heard learned counsel for the petitioner and learned APP
for the State.

2. Despite service of notice on the opposite party no. 2-
informant, nobody appeared on her behalf when the matter was
taken up and heard.

3. The petitioner has moved the Court under Sections
397 and 401 of the Code of Criminal Procedure, 1973 against the
judgment dated 04.06.2018 passed by the learned Additional
Sessions Judge-II, Jehanabad in Criminal Appeals No. 87 of 2017/
23 of 2017, by which the judgment of conviction and sentence
dated 13.11.2017 passed by the SDJM, Jehanabad in Ghoshi
(Okari OP) PS Case No. 64 of 2017, GR No. 482 of 2017/ TR No.
1816 of 2017, has been upheld.



4. The petitioner along with another person was accused in the FIR lodged by the opposite party no. 2 under Sections 392 and 411/35 of the Indian Penal Code. The allegation was that they had committed robbery and snatched away articles of the informant and were caught by the villagers and from both of them there has also been some recovered articles as well as cash. Upon trial, the petitioner along with the other person was acquitted under Section 411 of the Indian Penal Code but convicted under Section 392/35 of the Indian Penal Code. The appeal against the said conviction was also rejected.

5. Learned counsel for the petitioner submitted that the entire trial is vitiated on account of the prosecution not being able to prove its case, but still there has been conviction. It was submitted that as per the prosecution story itself the petitioner and the other co-accused were arrested at the site by the villagers of a particular village but surprisingly none of the persons, who are said to have caught hold of the petitioner, were made seizure list witness and instead the brother of the informant has been made one seizure list witness and the other seizure list witness is also a co-villager of the informant whose village is away from the place of occurrence. It was submitted that during trial the informant did not identify the petitioner. Learned counsel submitted that the



Investigating Officer in his deposition has admitted that the so called recovered articles from the petitioner were not put on Test Identification Parade or produced before the Court. Learned counsel submitted that the circumstances clearly show that the prosecution has not conducted the case in a manner so as to prove the guilt of the petitioner beyond all reasonable doubts.

6. Learned APP, upon going through the Lower Court Records, submitted that the seizure list witnesses have stated that in their presence search was made and articles recovered. However, on a query of the Court with regard to whether such articles were brought before the Court or identified by the informant to be the articles which were robbed and even with regard to the informant not identifying the petitioner during trial as also the reason why the villagers of the village where the petitioner and the other co-accused are said to have been caught were not made seizure list witness or even prosecution witness during trial, which creates serious doubts with regard to the prosecution version of the incident, learned APP fairly submitted that there is no explanation.

7. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties and materials available as per the Lower Court Records received, the



Court finds that the conviction of the petitioner is not based on conclusive proof and cogent grounds or materials which can show that the petitioner was involved in the crime beyond any reasonable doubt. Enough circumstances and materials have been shown on behalf of the petitioner to indicate that the recovery, articles recovered as well as the identity of the petitioner, has not been proved by the prosecution witnesses, to the degree required in law. This being the position, conviction cannot be sustained.

8. Accordingly, the application is allowed. The conviction of the petitioner stands set aside. He is discharged of the liabilities of his bail bonds.

9. The Lower Court Records be returned forthwith.

(Ahsanuddin Amanullah, J.)

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