

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL APPEAL (SJ) No.555 of 2017

In

CRIMINAL APPEAL (DB) No.1155 of 2016

Arising Out of PS. Case No.-540 Year-1998 Thana- ARARIA District- Araria

Mohib, Son of late Sagir, R/o Village-Chandradei, P.S.-Araria, District-Araria.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (SJ) No. 499 of 2017

In

CRIMINAL APPEAL (DB) No.7 of 2017

Arising Out of PS. Case No.-540 Year-1998 Thana- ARARIA District- Araria

- 1. Md. Taiyab, Son of late Seraj.
 - 2. Dukha @ Dukhawa, Son of late Rojit.
- Both R/o-Hayatpur, P.S.-Araria (R.S.), District-Araria.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with



CRIMINAL APPEAL (SJ) No. 653 of 2017

In

CRIMINAL APPEAL (DB) No.1161 of 2016

Arising Out of PS. Case No.-540 Year-1998 Thana- ARARIA District- Araria

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Sobрати, Son of late Mainuddin, R/o Village-Chandradei, P.S.-Araria, District-
Araria.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

(In all the Appeals)

For the Appellant/s : Mr. Upendra Prasad, Advocate
Ms. Veena Kumari Jaiswal, Advocate
Mr. Mukesh Kumar Rana, Advocate
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT

Date : 06-11-2020

All the three criminal appeals have been taken
up together for hearing.

2. In fact, separate applications were filed on
behalf of the appellants for suspension of sentence during
the pendency of the respective appeals. Their prayer for
bail, at the time of admission of their respective appeals,



were rejected. However, it appears from the office notes that the appeals were listed on the request of the learned counsel for the parties for their disposal on the question of sentence.

3. The appellants, in all the criminal appeals, have been convicted under Section 395 of the Indian Penal Code and have been sentenced to undergo rigorous imprisonment for ten years and a fine of Rs. 10,000/- each. In default of payment of fine, the appellants have been sentenced to undergo simple imprisonment for a period of three months. It has also been stipulated that the period already undergone by the appellants in custody shall be set-off from the aforesaid period.

4. The impugned judgment and order, dated 28.10.2016 and 29.10.2016 respectively, was passed by the learned 1st Additional Sessions Judge, Araria in Sessions Trial No. 486 of 1999/Trial No. 67 of 2016, arising out of Araria P.S. Case No. 540 of 1998.

5. It appears from the case records that while the informant/Abul Amin was coming back to his home, he



was ambushed by miscreants who had hid themselves in the road side bush. Other persons also were taken custody of by the miscreants, who were many in number. The informant was divested of Rs. 50,000/-, whereas others were divested of their personal belongings. Those who were been robbed are Mathura Paswan and Seikh Safid Mian. The informant claims to have identified the appellant/Sobrat (Cr. Appeal (SJ) No. 653 of 2017).

6. From the judgment and order of conviction, it appears that seventeen prosecution witnesses were examined during the trial. Out of the aforesaid witnesses, P.Ws. 1, 2, 3, 15 and 16 have been declared hostile, whereas P.Ws. 6, 8 and 14 have not supported the prosecution version. The aforesaid witnesses have also not identified anyone of the appellants during the course of trial.

7. P.W. 17 is a formal witness, who has only identified the formal F.I.R. and the *fardeybeyan* (Exhibits – 1 and 2).

8. The informant (P.W. 15), as noticed earlier, has completely given a go-by to the prosecution case and



the Investigating Officer of the case has not been examined by the prosecution. No explanation also has been offered by the prosecution for non-examination of the Investigating Officer.

9. Apart from this, it appears that there are several contradictions in the deposition of other prosecution witnesses with respect to the manner, time and place of occurrence as well as the participation of the accused persons including the appellants.

10. The miscreants, according to the prosecution version, were about twenty to twenty-five in number. The appellant/Dukha @ Dukhawa (Cr. Appeal (SJ) No. 499 of 2017) has been identified by P.W. 4, who has not identified any other person. Similar is the case with P.W. 6, who too has identified appellant/Md. Taiyab only (Cr. Appeal (SJ) No. 499 of 2017). P.W. 7 has identified appellant/Sobrati (Cr. Appeal (SJ) No. 653 of 2017) and appellant/Mohib (Cr. Appeal (SJ) No. 555 of 2017).

11. The prosecution case appears to be faltering at the seams so far as the other relevant considerations in a



trial are concerned.

12. However, regard being had to the fact that appellant/Mohib (Cr. Appeal (SJ) No. 555 of 2017) and appellant/Sobrati (Cr. Appeal (SJ) No. 653 of 2017) have been identified by three and two witnesses respectively and appellants/Md. Taiyab and Dukha @ Dukhawa (Cr. Appeal (SJ) No. 499 of 2017) have been identified by three other witnesses, I am not inclined to interfere with the judgment of conviction.

13. It has been submitted on behalf of the appellants that prior to their conviction, the appellants have remained in jail for about a year and they are in custody since the date of the judgment, *i.e.*, 28.10.2016.

14. Thus, the appellants have spent more than five years in custody.

15. Since the occurrence is of the year 1998 and there are several mitigating factors in the case, this Court is of the considered view that the interest of justice would be subserved if the sentences of the appellants are reduced to the period of custody which they have already



undergone.

16. It is ordered accordingly.

17. The conviction of the appellants is maintained, but the sentence is reduced to the period already undergone.

18. The appellants shall be released from the custody on receipt of a copy of this judgment.

19. Let a copy of this judgment be transmitted to the Jailer, Araria Jail forthwith.

20. A copy of the judgment shall be preserved for future reference.

21. All the three appeals are partially allowed and disposed off accordingly.

(Ashutosh Kumar, J)

Praveen-II/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	08.11.2020
Transmission Date	08.11.2020

