

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1459 of 2019

Arising Out of PS. Case No.-102 Year-2014 Thana- PHULWARIYA District- Gopalganj

Vijay Kumar Chaudhary, Male, Aged about 39 years, Son of Kishore Chaudhary Resident of Village- Bathuwa Bazar, P.S.- Phulwariya, District- Gopalganj.

... .. Appellant/s

Versus

1. The State of Bihar.
2. Dinesh Manjhi, Male, aged about 33 years, son of Videshi Manjhi Resident of Village- Balepur Gadditola, P.S.- Fulwariya, District- Gopalganj.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr.Prince Kumar Mishra
For the Respondent/s	:	Mr.Abhimanyu Sharma

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

and

HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SHIVAJI PANDEY)

Date : 08-01-2020

Heard learned counsel for the appellant and counsel for the respondents.

In the present case, the appellant has challenged the order of acquittal dated 30th of September, 2019 passed in Sessions Trial No. 87 of 2017 arising out of Fulwriya P.S. Case No. 102 of 2014 registered for offence under Section 395 of the Indian Penal Code.

As per allegation, while the Informant, after taking meal, was sleeping in his house and his elder son Vijay Kumar Chaudhari had gone to visit Jhulan Mela, about 10-12 miscreants



came at the main door of the Informant and, on the point of gun, they told to open the door by disclosing them as policemen. Under fear, the Informant opened the main door of the house and four miscreants in police dress and two miscreants in T-shirts-Full Pants dress and four in Lungi-Ganji dress were wielded with gun and other weapons entered into the house of the Informant. A doubt arose that the miscreants are not the policeman. On the point of gun, two miscreants restrained the Informant and remaining entered into the room of his wife Tatri Devi. Thereafter, they arose the grandson Golu and her wife and opened the box kept into the room and took out Rs. 20,000/-, cash, a golden Tika, a pair of Payal, one golden Mangalsutra and other ornaments. Thereafter, the miscreants entered into the room of Manti Devi and snatched her raring and by breaking the Attachi and box, they took out the ornaments and cash of Rs. 57,000/-. Thereafter, the miscreants entered into the third room of the Informant and spread the goods. At last, the miscreants by taking out all the ornaments and cash money along with one Attachi and two boxes fled away by closing the door from the outside. Thereafter, the Informant raised noise and the information was given to his son Vijay Kumar Chaudhari. Thereafter, the First Information Report was lodged.



It appears from the record that in the night itself, the police had reached to the place of occurrence, the F.I.R. has been instituted on the next day on 21.8.2014 at 11.50 AM and there is no explanation for such delay in lodging the F.I.R. At the same time, when the Fardbeyan was taken by the police, the present respondent and two others were of the same village but, the appellant did not give their names. In further statement before the police, the appellant disclosed the name of the appellant and others giving explanation that during that period, he was in trauma and, that is why, he could not give the name of the respondent.

One thing is important that even after long period of lodging of the First Information Report, the appellant failed to give the name of the present respondent who was known to him. The police has also not found any material which was taken by the miscreant from the possession of the present respondent. Further, if the appellant was of the same village as that of the respondent then the normal action of human being would be that before committing such a heinous crime, he will cover his face and he will not go without veil. Though consistently the family members of the appellant have taken the name of the respondent but, they should have taken it at the earliest and, even after long delay of 11 Hrs., they failed to disclose the name of the present respondent and



other accused persons as the First Information Report has been lodged against the unknown persons.

Respondents are of the same village, the police, on getting the name, should have recovered the lost material but, no such action appears to have been taken.

Looking to the entirety, we do not find any error in the impugned judgment of acquittal dated 30.09.2019. Accordingly, this appeal is dismissed.

(Shivaji Pandey, J)

(Anjani Kumar Sharan, J)

rishi/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13.01.2020
Transmission Date	13.01.2020

