

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.134 of 2007

Arising Out of PS. Case No.-20 Year-1985 Thana- ARWAL District- Jehanabad

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1. SHRI RAM PATHAK S/O Late Sukhdeo Pathak R/O Village- Pakharpur, P.S.- Arwal, Dist. Jehanabad (Now Arwal).
 2. JAGDISH MAHTO S/O Shri Debnand Mahto R/O Village- Pakharpur, P.S.- Arwal, Dist. Jehanabad (Now Arwal).
 3. RAMANUJ SINGH S/O Shri Ram Swaroop Singh R/O Village- Pakharpur, P.S.- Arwal, Dist. Jehanabad (Now Arwal).

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant No.1 : Mr. B.K.Singh Chouhan, Adv.
For the Respondent/s : Ms. Anita Kumari Singh, APP

CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL JUDGMENT

Date : 19-09-2023

Re:- I.A. No. 10 of 2023

1. At the outset, learned counsel for the appellants presses the I.A. No. 10 of 2023.

2. Learned counsel for the appellants submits that the appellant No. 3 namely, Ramanuj Singh has died on 27.02.2020 leaving behind his heirs and legal representatives who are not interested to press the appeal in respect of the deceased appellant, hence a prayer is made in I.A. No. 10 of 2023 to expunge the name of the deceased appellant from the memo of appeal and in support of the factum of the death of the deceased appellant, his death



certificate has been filed as Annexure-1 enclosed to the I.A. No. 10 of 2023.

3. Having considered the above submissions as well as having perused the death certificate of appellant No.3 filed as Annexure No. 1 to the I.A. No. 10 of 2023, the instant appeal stands abated in respect of the deceased appellant No. 3 and the appeal will now survive in respect of rest appellants.

4. Accordingly, I.A. No. 10 of 2023 stands allowed.

Cr. APP (SJ) No. 134 of 2007

5. Learned counsel Mr. B.K. Singh Chouhan appearing for the appellant No. 1 and learned APP Ms. Anita Kumari Singh for the State are present and they are heard on the merit of this appeal but no one appeared on behalf of the appellant No. 2.

6. The instant Criminal Appeal has been filed against the Judgment of Conviction dated 15.01.2007 and Order of Sentence dated 18.01.2007, passed by learned Addl. District and Sessions Judge (F.T.C.-2), Jehanabad, in Sessions Trial No. 174/1992 DJ/204/2002 arising out of Arwal P.S. Case No. 20 of 1985, whereby and whereunder the appellants were convicted for the offence punishable under Section 395 of the Indian Penal Code (hereinafter referred to as "I.P.C.") and sentenced to undergo rigorous imprisonment for seven years for the said offence.



7. The substance of the prosecution's case is as follows:-

As per the FIR, lodged by one namely, Rameshwar Nath Singh, on 24.02.1985 in the night at about 12.00 AM, he, his wife and his children were sleeping in their house then he woke up on hearing a sound of breaking of a lock, soon-after some persons entered into his house and started to search the articles and at that time they were having pistols and country-made rifles with them. They asked the inmates to disclose the whereabouts of the cash and jewellery and also asked for papers of land which was in dispute. He further alleged that as his family members did not disclose the location of the required articles so, one of the *dacoits* snatched a child from the lap of Usha Devi and threw him down, then out of fear Usha Devi disclosed the location of every article and ultimately the accused persons looted the ornaments, cash money and other articles worth of Rs. 40,000/- to Rs. 50,000/-. The informant further stated in the FIR that in the light of a lantern he himself identified three accused persons as Shri Ram Pathak, Ramanuj Singh and Jagdish Mahto and thereafter upon alarm being raised by him, villagers assembled at the place of occurrence, to whom he explained about the incident.

8. On the basis of above allegations levelled by the informant in his *fardbeyan*, an FIR bearing Arwal P.S. Case No. 20



of 1985 (Exhibit-2) was registered under Section 395 of I.P.C. which set the criminal law in motion and after the completion of investigation the appellants were chargesheeted and thereafter the concerned Judicial Magistrate took cognizance of the alleged offence and thereafter committed the case of the appellants to the Court of Sessions.

9. The appellants stood charged for the offence punishable under Section 395 of I.P.C. During trial, altogether seven prosecution witnesses were produced and examined and in documentary evidence the *fardebayan* of the informant and formal FIR were proved and marked as Exhibit-1 and Exhibit-2 respectively.

10. The appellants' statements were recorded under Section 313 of Cr.P.C., in which they denied the circumstances appearing against them from the prosecution evidences and mainly took the defence that they were not the members of *dacoits*. In defence, the appellants did not give any evidence.

11. The learned Trial Court convicted the appellants for the offence punishable under Section 395 of I.P.C after taking the evidence of the prosecution, recording statement of accused persons under Section 313 of Cr.P.C. and hearing both the parties.



12. The main submissions advanced by learned counsel for the appellants are that in the trial of the appellants, the investigating officer was not produced and examined, so the material contradictions with regard to the number of accused, source of identification of the accused could not be cleared and incriminating materials such as lantern, broken lock etc. which are stated to have been found at the alleged place of occurrence were not seized and brought before the trial Court by the prosecution and the accused did not get an opportunity to find out the actual truth by cross-examining the I.O. regarding the said contradictions and incriminating materials. In the present matter the prosecution failed to prove the injuries to the victims which were alleged to have been caused by the accused to them while committing the offence of dacoity and there is serious contradiction in between the statements of the witnesses in regard to the number of the accused. Further submission is that during investigation, none of the appellants was put on *Test Identification Parade* before the victims and any part of the looted articles was not recovered from their possession and the I.O., who investigated and inspected the place of occurrence, did not find any sign of breaking of door lock, which also falsifies the allegations levelled in the FIR. Further submission is that it is an admitted position that at the time of



commission of the alleged occurrence the accused demanded the papers of some land from the victims which shows that there was some land dispute in between both the parties and the same was the main reason to lodge the FIR falsely.

13. Learned APP has vehemently opposed the appeal and submitted that the instant matter relates to the serious offence of *dacoity* and the appellants were identified by the victims and the prosecution succeeded to prove the offence of Section 395 of I.P.C. against them and the impugned Judgment was rightly passed and there is no force in this appeal hence, the same is liable to be dismissed.

14. Heard both the sides, perused the judgment impugned and evidences available on the record of trial Court and also perused the statements of the appellants. In the instant matter, as per allegation the appellants and other co-accused persons, firstly, entered into the house of the informant by breaking the door latch (*Killli*) of his house and thereafter, assaulted the informant's family members and forced them to disclose the location of ornaments, cash amount and other valuable articles which were, upon disclosure, looted by the accused and the appellants were identified by the victims when the alleged



occurrence of *dacoity* was being committed as the appellants are stated to be co-villagers of the victims.

15. Regarding the number of the accused persons who committed the offence of *dacoity* in the house of the informant, there is a serious contradiction in between the statements of the prosecution's witnesses as according to P.W.2., five to six accused were seen in fleeing position from the house of the informant, out of them two were identified by him. The said figure was also revealed by P.W.2. in his cross-examination. But he deposed in the cross-examination that due to darkness, he could not identify the particular accused who was carrying a particular weapon. The said fact clearly goes to show that at the time of commission of the alleged occurrence, there was darkness but even then P.W.2. claimed to have identified the accused Shri Ram Pathak and Ramanuj Singh as being members of the dacoits. Hence, the evidence of P.W.2. does not appear to be reliable, particularly, with regard to the identification of the appellants. P.W.3. Usha Devi is stated to be an eye-witness of the alleged occurrence. She deposed in the examination-in-chief that door latch (*Killi*) was broken when the accused pushed the door of his house and thereafter, the accused looted the ornaments, cash amount and clothes kept in the boxes and after that her child who was in her lap was snatched by



the accused and thrown to the ground and she was also assaulted by the accused. She further deposed that the number of *dacoits* was 15 to 20. Here it is important to mention that regarding the number of *dacoits* the said witness revealed a contradictory fact to the statement of P.W.2. and according to her evidence the accused assaulted her and her child and in the evidence of other witnesses it came into light that the victims were examined medically but during trial any medical prescription or any other document concerned to their medical treatment was not produced and proved by the prosecution nor the doctor, who treated the victims, was produced and examined by the prosecution and the said circumstance casts a serious doubt in the allegations levelled by the prosecution against the appellants.

16. P.W.3. deposed in the cross-examination that she saw the accused in the light of lantern which is stated to be the source of identification of the accused who committed the alleged offence of *dacoity* but P.W.4. who is also said to be an eye-witness of the alleged occurrence, deposed in the cross-examination that there was complete darkness in her house when she opened the door of her room. The said contradiction with regard to the source of identification of the accused also casts a serious doubt in the truthfulness of the prosecution's allegation. As per prosecution's



allegation, P.W.4. was also assaulted by the accused when the alleged occurrence of dacoity was being committed and the said victim deposed in her cross-examination that she sustained injury to her ear and the next day she was treated by the doctor. The prosecution failed to produce any documentary evidence to prove the said injury of P.W.4. as well as the factum of her medical treatment. Hence, the evidence of P.W.4. does not appear to be reliable. P.W.5. is also stated to be an eye-witness of the alleged occurrence and he revealed the names of the appellants but he did not disclose in his evidence about the unknown persons who are also alleged to be involved in the commission of the alleged occurrence of *dacoity* and according to his evidence the alleged occurrence was committed by the appellants only while as per the evidence of P.W.2., five to six persons committed the alleged occurrence and as per the evidence of other witnesses, more than fifteen persons committed the alleged occurrence and the said contradiction in respect of number of accused, appearing in the statements of these witnesses, makes the prosecution's allegation to be highly suspicious.

17. The appellants have taken the defence that on account of some land dispute the FIR was lodged with false allegation. In the FIR, it was alleged that the accused persons



demanded the papers of some land from the victims when the alleged occurrence of *dacoity* was being committed and when the victims were asked in the cross-examination as to whether any litigation had run in between the accused Ramanuj Singh and prosecution party or not, then on that question the said witnesses did not flatly deny the factum of litigation in between both the parties and they simply stated that they had no knowledge of any such litigation. These facts are sufficient to raise the presumption that there was some tense relation in between the prosecution party and the accused on account of some land dispute as in the absence of such dispute there was no need for the accused to demand papers of a particular land from the victims when they were committing the offence of *dacoity*.

18. In the instant matter, during trial of the appellants neither the Investigating Officer nor the doctor concerned, who treated the victims for the alleged injuries which are stated to have been sustained by the victims at the time of the occurrence was produced and the same can be deemed to be material flaw in the prosecution's side as the accused could not get an opportunity to cross-examine the Investigating Officer regarding the evidences collected by him during investigation, though there might be some reason in non-appearance of the investigating officer before the



trial court but non-production of the injury report of any of the victims and non-examination of the doctor concerned, who treated the victims, by the prosecution during the trial appear to be a serious lacuna in the prosecution's case and also cast a serious doubt in the credibility of the prosecution's story as the medical evidence could have been easily given by the prosecution during the trial of the appellants.

19. In the instant matter as per the evidence of P.Ws.2,3,4 and 5, the appellants were identified immediately by these witnesses at the time of commission of the alleged occurrence and as per allegation, the accused looted several ornaments, cash amount, clothes and other articles from the house of the victims and admittedly the appellants are co-villagers of the victims. But despite having knowledge of these facts, the Investigating Officer failed to recover any part of the looted articles from the possession of the appellants or their houses after their arrest. The said circumstance also creates a serious doubt in the truthfulness of the prosecution's allegation.

20. For the reasons discussed above, I am of the considered view that the appellants were wrongly convicted by the trial Court as the evidences adduced by the prosecution were not rightly appreciated by the Trial Court and the prosecution failed to



prove the offence of *dacoity* having been committed by the appellants and others beyond all reasonable doubts. Hence, the Judgment and Order impugned convicting and sentencing the appellants are not sustainable in the eye of law, so they are set aside and the instant appeal stands allowed.

21. Both the appellants namely, Shri Ram Pathak (Appellant No.1) and Jagdish Mahto (Appellant No.2) are on bail, hence they as well as their sureties are discharged from their liabilities arising out of their respective bonds.

22. Let the LCR of the instant appeal be sent back to the Court concerned.

(Shailendra Singh, J.)

Maynaz/-

AFR/NAFR	AFR
CAV DATE	NA
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