

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.392 of 2006

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Mantoo Mian @ Dhekiya @ Mantoo @ Langru, son of Ragu, resident of
Mohalla-Maroofojanj, P.S.-Civil Lines, District-Gaya

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Vipul Sinha, Amicus Curiae
For the Respondent/s : Mr. Abhay Kumar, APP.

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CORAM: HONOURABLE MR. JUSTICE SUNIL KUMAR PANWAR
ORAL JUDGMENT

Date : 13-03-2024

Heard Mr. Vipul Sinha, learned *Amicus Curiae*
and Md. Abhay Kumar, learned A.P.P for the State.

2. The present appeal has been filed against the judgment of conviction dated 13.04.2006 and order of sentence dated 15.04.2006 passed by learned Additional Sessions Judge, F.T.C-V, Gaya in connection with Sessions Trial No. 29 of 2005/ 472 of 2004, arising out of Civil Lines P.S. Case No. 17 of 2004, whereby and whereunder the appellant was found guilty and convicted for the offences punishable under Section 402 of the Indian Penal Code and he was sentenced to



undergo rigorous imprisonment for five years and fine of Rs. 5000/- for the offence punishable under Section 402 of the Indian Penal Code and if the appellant fails to deposit the amount, he was further directed to undergo rigorous imprisonment for one year.

3. The prosecution case as per the F.I.R is that

on 23.01.2004 at 9:15 P.M, the informant being Officer-in-charge, Civil Lines Police Station received a secret information that some miscreants have gathered at Railway Cinema Campus, Gaya and are planning to commit some offence. On getting such information, he informed the same to the higher authority and on the direction of Dy. S.P, Gaya, a raiding team was constituted and the informant along with other police officials proceeded towards Railway Cinema Campus and saw that 7-8 persons were sitting there and they were talking on some matter. They started fleeing away as soon as they saw the police party. After chasing them,



two persons were arrested and in the presence of independent witnesses namely Vijay Kumar, Laxman Sao and Md. Mobin, they were searched and during the course of search, four live bomb kept in a plastic bag were recovered from the possession of the appellant. The other apprehended accused person told his name as Md. Javed. Both the apprehended accused persons during the course of their confessional statements confessed that Babloo Mian, Naushad Mian, Akhter Mian, Mohd. Auranjeb, Mohd. Sila Mian, Mohd. Allauddin and one other person were also their companions and they fled away seeing the police party.

4. On the basis of the self statement of the informant, Civil Lines P.S. Case No. 17 of 2004 was registered against the accused persons including the appellant for the offences punishable under Sections 399, 402 of the Indian Penal Code and Section 3/ 4 of the Explosive Substances Act.

5. After completion of the investigation,



charge-sheet was submitted and cognizance was taken by the learned Chief Judicial Magistrate, Gaya and the case of six accused persons were split up as the investigation against them was pending. Thereafter, the case of two accused persons including the appellant was committed to the Court of Sessions for trial. During the course of recording of the statement, since co-accused Mohd. Javed was absconding, hence, the case of Mohd. Javed Mian was split up and statement of the trial facing accused was recorded.

6. During the course of trial, fifteen prosecution witnesses were examined on behalf of the prosecution. P.W. 1 Vijay Kumar, P.W. 2, Ashok Kumar (Constable 800), P.W. 3 Sanjai Paswan (Constable 170), P.W. 4 Libiya Singh Kuntiya, P.W. 5 Janardan Prasad Singh (Informant/Constable 1039), P.W. 6 Surajdeo Paswan, P.W. 7 Sanjai Diwakar (Constable 1478), P.W. 8 Ashok Singh (Constable-783), P.W. 9 Tarkeshwar Prasad Singh (I.O.), P.W. 10 Jivit Singh



(Hawaldar), P.W. 11 Ajai Sharma (Constable-36), P.W. 12 Dinesh Kumar Yadav (Constable-1647), P.W. 13 Mukesh Kumar (Constable-1485), P.W. 14 Kanchan Kumar Singh (Constable-445), P.W. 15 Sanjai Kumar (Constable-1490).

7. P.W.1 Vijay Kumar has not supported the case of the prosecution and he has been declared hostile.

8. P.Ws. 2, 3 and 4 namely Ashok Kumar, Sanjai Paswan and Libiya Singh Kuntiya are Constables and members of the raiding team and they have stated in their respective examinations-in-chief that they proceeded towards Railway Cinema Campus on getting secret information on 23.01.2004 at about 5:30 P.M. and saw that 7-8 persons were standing there who started fleeing away seeing the police party. Two persons were arrested and four live bombs were recovered from the possession of the appellant which were kept in a plastic bag. It is pertinent to mention



here that these P.W.s were not cross-examined by the trial facing accused.

9. P.W. 5 Janardan Prasad Singh is the informant of the case who has stated in his examination-in-chief that on 23.01.2004, he was posted as Officer-in-charge, Civil Lines Police Station and on that very day, he got secret information that some criminals have been gathered in the Railway Cinema Campus and they are making plan to commit dacoity. Thereafter, he informed the higher authorities and on the direction of Dy.S.P, a raiding party was constituted headed by this witness. Thereafter, they proceeded towards Railway Cinema Campus at about 5:30 P.M and reached there and found that there were 7-8 persons who were gossiping there. After seeing the police party, they started to flee from there, but in the course of fleeing away, two persons namely Mantoo Mian @ Dhekiya (appellant) and Mohd. Javed were arrested. In presence of two independent witnesses search was



made and during the course of search, four live bombs were recovered from the possession of the appellant which kept in a plastic bag. On interrogation, the appellant told that he along with other accused persons were making plan to commit dacoity and other persons who fled away were armed with deadly weapons.

10. P.Ws. 6, 7, 8, 10, 11, 12, 13, 14 and 15 are *Constables* and *Havaldar* of the raiding party and they have also been examined by the prosecution. These witnesses have narrated the same story as narrated by other prosecution witnesses.

11. P.W. 9 Tarkeshwar Prasad Singh is the Investigating Officer of the case. He has stated in his examination-in-chief that he was also a member of the raiding party and has proved that on 23.01.2004 at about 5:30 P.M, a raid was conducted in the guidance of Janardan Prasad Singh (P.W. 5) in which several police officers as well as Constables and Home-guards were the member of the raiding party. During the



course of search, two persons were arrested and rest succeeded to flee away. Four bombs were recovered from the possession of the appellant. This witness has specifically stated that Railway Cinema Campus is situated in Mohalla Maroof-ganj and there is open place towards south. The said Cinema Hall is closed for the last several months. It is surrounded by a boundary-wall and it is a lonely place.

12. Mr. Vipul Sinha, learned *Amicus Curiae*, in defence of the appellant has submitted that all the prosecution witnesses are interested witnesses, hence, their evidences cannot be relied upon in the absence of any independent witness. The prosecution has failed to establish the fact that any bomb had been recovered from the possession of the appellant as no material like recovered bomb were produced during the course of trial. From the materials available on records, it appears that for the occurrence of 23.01.2004, two cases were instituted one under Section 399/402 of the Indian



Penal Code and another under Section 3/4 of the Explosive Substance Act. However, charge-sheet in this case was only submitted under Sections 399/402 of the Indian Penal Code and not under Section 3/ 4 of the Explosive Substance Act.

13. From perusal of the records and on going through the evidences, it appears that none of the independent witness was examined to prove the case of the prosecution and all the prosecution witnesses are members of the raiding party and interested witnesses and in the absence of any independent witness, the version of the prosecution side cannot be relied upon. The prosecution claims that four bombs concealed in a bag were recovered from the possession of the appellant but during the course of trial, the material exhibit was not produced before the Trial Court which itself falsify the case of the prosecution. While proving the charge under Section 399 I.P.C, the prosecution must prove:-(i) that the act of the accused amounted to



preparation (ii) that it was preparation to commit dacoity. While proving the charge under Section 402 I.P.C, the prosecution must prove:- (i) five or more persons were assembled (ii) that they were assembled for the purpose of committing dacoity (iii) that the accused was one of such persons. There is manifestly a distinction between the offences under Section 399 and Section 402. The offence under Section 402 is complete as soon as five or more persons assemble together for the purpose of committing a dacoity. Preparation for committing a dacoity may take place before or after the dacoits assemble together. Preparation consists in devising or arranging the means necessary for the commission of an offence. Though the offence falling under Section 402 and the offence falling under Section 399 would probably involve almost similar ingredients, the only difference is that under Section 402 mere assembly without other preparation is enough whereas section 399 is attracted if some additional step is taken



in the course of preparation. The prosecution failed to exhibit the objectionable material which was alleged to be recovered from the conscious possession of the appellant. The learned Trial Court vide para 22 of the judgment has wrongly drawn inference as;

"In this case prosecution had only to prove that accused persons and other associates were assembled in a place for making plan to commit dacoity and to my view prosecution has succeeded to establish the said act. The material available on the record does not attract the provision of Section 399 of the Indian Penal Code. Although all the witnesses are police officials but there is no any material on the record to disbelieve their evidence. Non-production of material exhibit is not material in this case"

14. When the prosecution fails to prove the charge under Section 399 of the I.P.C, it will not be proper to say that the prosecution succeeds to prove the charge under Section 402 of the I.P.C. Hence, the prosecution has failed to establish its case beyond the shadow of all reasonable doubts with respect to the



manner, motive and place of the occurrence, therefore, the benefits of doubt goes in favour of the appellant.

15. In that view of the matter, judgment of conviction dated 13.04.2006 and order of sentence dated 15.04.2006 passed by learned Additional Sessions Judge, F.T.C-V, Gaya in connection with Sessions Trial No. 29 of 2005/ 472 of 2004, arising out of Civil Lines P.S. Case No. 17 of 2004 is set aside.

16. The appellant is acquitted of all the charges after giving benefits of doubt.

17. The appellant is all along on bail. He is discharged from the liabilities of the bail bonds.

18. This Court expresses the appreciation for the efforts taken by Mr. Vipul Sinha, learned *Amicus Curiae* who had insisted for assisting the Court in the matter. This Court directs the Patna High Court Legal Services Committee to pay to Mr. Vipul Sinha a sum of Rs. 6000/-(Six Thousands) towards his professional fee for extending valuable assistance to this Court in



deciding this appeal.

19. Accordingly, the appeal stands allowed.

(Sunil Kumar Panwar, J)

Shageer/-

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