

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL APPEAL (SJ) No.300 of 2006**

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Chaman Yadav son of Late Mathura Yadav, resident of Village-Dhamana,  
Police Station-Jhajha, District-Jamui

... .. 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. Ramchandra Singh, 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 Mr. Ramchandra Singh, learned A.P.P for the State.

2. The present appeal has been filed against the judgment of conviction dated 20.04.2006 and order of sentence dated 26.04.2006 passed by learned Additional Sessions Judge, F.T.C-IV, Jamui in connection with Sessions Trial No. 341 of 1987, arising out of Laxmipur P.S. Case No. 113 of 1985, whereby and whereunder the appellant was found guilty and convicted for the offences punishable under Section 399, 402 of the Indian Penal Code and he was sentenced to undergo rigorous imprisonment for ten years and a fine of Rs.



2000/- for the offence punishable under Section 399 of the I.P.C and further rigorous imprisonment for five years and to pay fine of Rs. 1000/- for the offence punishable under Section 402 of the Indian Penal Code and in case of default in making payment of fine, the appellant was further directed to undergo rigorous imprisonment for three months.

3. The prosecution case as per the F.I.R is that the informant Rajkumar Yadav gave his *fardbayan* on 28-06-1985 to the effect that in the evening of 27.06.1985, Dhaturi Yadav was returning after grazing his cows from the forest when he saw that 8-9 persons were eating and drinking at Karghatta River Ghat who asked him about the village. He told the name of his villager then the miscreants told him to go. Thereafter, the villagers assembled and proceeded towards Karghatta river in south east of the village. He has said that the moment the villagers reached near Karghatta river, the miscreants who were armed with deadly



weapons proceeded towards them and asked the villagers to stop and opened fire. The villagers then started brick-batting upon the miscreants. Thereafter, they started returning back and again started firing. After some chase, the miscreants started fleeing and one of them fell down who was caught. He disclosed his name as Chaman Yadav, the appellant. On search, one loaded country made pistol was recovered from the possession of the appellant. While chasing by the villagers, the miscreants exploded bomb and opened fire, as a result of which, one Mahesh Ram received fire arm injury in his left leg below knee and fell down. On hearing gunshot firing, the villagers of other village also assembled and apprehended one other miscreants namely Prakash Mandal and started assaulting him, as a result of which, he succumbed to the injuries due to assault.

4. On the basis of the aforesaid fardbeyan of the informant, Laxmipur P.S. Case No. 113 of 1985 was



registered against the appellant and other accused persons for the offences punishable under Sections 399, 402, 307 of the Indian Penal Code and Section 27 of the Arms Act.

5. After completion of the investigation, finding the case true, the police submitted charge sheet and thereafter cognizance was taken in the aforesaid sections against the appellant. Thereafter, the case was committed to the Court of Sessions for trial.

6. During the course of trial, four witnesses were examined on behalf of the prosecution.

7. P.W.3 Raj Kumar Yadav is the informant of the case who has stated in his examination-in-chief that the occurrence took place on 27.06.1985 in the evening. He has said that Dhaturi Yadav returned from the forest and informed that 8-9 persons armed with deadly weapons were eating and drinking on the sand of Karghatta river. In paragraph-2 of his examination-in-chief, he has stated that villagers assembled and sent



Kolleshwar Yadav and Baijnath Mistry to collect primary information who came back and told that the *dacoits* were making bombs. This witness has stated that about more than 100 people including himself went towards river and gave sound. Thereafter, the criminals started firing. The mob of villagers raised alarm. He has said that after chase one *dacoit* fell down at some distance who was caught by the villagers. He has said that he disclosed his name as Chaman Yadav, the appellant, from whose possession, one country made pistol and one live cartridge was recovered. He has said that some people caught Chaman Yadav (appellant) and rest followed and attacked the *dacoits* by bricks and arrow. He has said that one another *dacoit* also fell down and was caught who disclosed his name as Prakash mandal. Thereafter, he died due to assault. In paragraph-3 he has stated that Mahesh Ram of his village also received gunshot injury in his left leg at the hands of the *dacoits*. He has said that Mahesh was brought in the village but



due to fear they did not go anywhere in the night. The appellant has disclosed the name of his other associates as Basuki Yadav, Prakash Yadav and others. He has identified the appellant in the Court. This witness has stated that the officer-in-charge came in the village and arrested *dacoit* and the recovered arms and ammunition were handed over to him.

8. P.W. 1 Dhaturi Yadav in his examination-in-chief has stated that while he was grazing the cows, he had seen 10-12 persons making something. He has said that when he asked them, they did not tell anything and thereafter he returned back in the village and told the villagers that some miscreants had assembled. In paragraph-2 of his evidence, he has deposed that villagers chased them then they started opening firing and hurled bombs. He has stated that villagers made brick batting and caught one Chaman Yadav (appellant). In paragraph-3 of his evidence, this witness has stated that one man named Prakash was also caught. He has



also said that Mahesh Ram received gunshot injury at the hands of the accused persons. He has identified accused Chaman Yadav (appellant) in the Court.

9. P.W. 2 is Mitan Ram, who has stated in his examination-in-chief that he had gone towards Karghatta river with the villagers where miscreants numbering 7-8 were seen who had done firing and had hurled bombs upon the villagers. He has said that the villagers had also made brick batting. He had said that Chaman Yadav (appellant) was caught who on interrogation had disclosed the names of his other associates. This witness has further deposed that Mahesh Ram had received gunshot injury. He has further deposed that one Prakash Mandal was caught and was done to death at the hands of the villagers.

10. P.W. 4 is Mahesh Ram, the injured himself who has stated in his examination-in-chief that villagers were informed by one Dhaturi Yadav and Baijnath Mistry that the miscreants were preparing to commit some



offence near Karghatta river. Thereafter the villagers chased them. He has said that the miscreants attacked the villagers, opened firing and hurled bombs. This witness has further deposed that villagers countered the miscreants by bricks and stones. In paragraph-2 of his evidence, this witness has stated that he was also amongst the villagers who attacked the criminals. He has said that one culprit was caught by him. He has said that one country made pistol and one live cartridge was recovered from his possession. He deposed that another criminal Prakash Mandal died due to assault made by the villagers. In paragraph-4, he had said that while he was chasing, firing was made upon him by accused Basuki Yadav which hit in his left leg below knee. He said that he was treated in Laxmipur Hospital and he went in the police station next morning.

11. Mr. Vipul Sinha, learned *Amicus Curiae*, in defence of the appellant has submitted that learned Court below had failed to appreciate that even though it



was the case of the prosecution that Mahesh Ram (P.W. 4) was injured in the occurrence, nonetheless neither the injury report has been proved nor the doctor has been examined. Learned Court below has also failed to appreciate that non-examination of the doctor and not proving the injury report of the injured witness clearly establishes that the entire story about P.W. 4 being injured in the occurrence is false and fabricated and has been introduced in the prosecution story in order to give a serious colour to it. It is pertinent to mention here that for the recovery and seizure of fire arms from the possession of the appellant, a separate case was instituted which on trial was found to be false and the appellant was acquitted. This clearly establishes that the story of the appellant being a member of the mob which was making preparation for committing dacoity is false as the case with respect to the recovery of fire arm from the possession of the appellant has been proved to be false. The evidence of the P.W.s 3 and 4 does not



suggest that the injured (P.W. 4) sustained injuries due to firearm caused by the appellant. Two persons namely Baidyanath Mistri and Koleshwar Yadav who had informed the informant about the assemblage of persons have not been examined and no explanation has been offered for their non-examination. Non-examination of these witnesses caused serious prejudice to the appellant. The Investigating Officer of this case has not been examined and no explanation was furnished by the prosecution for the non-examination of the Investigating Officer. Hence, the appellant is seriously prejudiced by the non-examination of the Investigating Officer because the statement of the witnesses at the trial are highly inconsistent and attempt has been made to make improvements in the case at the trial. Such witnesses could not be confronted with their earlier statement only because the Investigating officer of this case has not been examined. Hence, the prosecution has not been able to establish its case beyond shadow of reasonable



doubt.

12. From perusal of the records and on going through the evidences, it appears that all the prosecution witnesses are relatable to each other and are highly interested witnesses. There is no injury report on the record to prove the injury of injured (P.W. 4). 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. Whatever have been stated by the witnesses in their evidence was not contradicted in absence of evidence of Investigating Officer. The right of bringing on record the contradictions in the statement of witnesses made before the Investigating Officer is a very valuable right of the accused and by showing that, the witness has made improvements or has given evidence, which contradicts his earlier statement, the accused is able to satisfy the Court that the witness is not reliable witness. In my view, the Investigating Officer is a material witness and non-examination of the



Investigating Officer has definitely prejudiced the appellant since the appellant lost opportunity to cross-examine the Investigating Officer on point of seized materials, visit of I.O. at the place of occurrence and contradictions in the statement of prosecution witnesses before the Investigating Officer. The non-examination of the Doctor has also made the case of the prosecution doubtful as the injuries sustained by the injured (P.W.4) is fatal or not is to be proved by the evidence of the Doctor. Hence, the prosecution has failed to establish its case beyond the shadow of all reasonable doubts with respect to the manner and motive of the occurrence and the injuries sustained by the injured (P.W.4). Hence, the benefits of doubt goes in favour of the appellant.

13. In that view of the matter, the judgment of conviction dated 20.04.2006 and order of sentence dated 26.04.2006 passed by learned Additional Sessions Judge, F.T.C-IV, Jamui in connection with Sessions Trial No. 341 of 1987, arising out of Laxmipur P.S. Case No.



113 of 1985 is set aside.

14. The appellant is acquitted of all the charges.

15. The appellant is all along on bail. He is discharged from the liabilities of the bail bonds after giving benefits of doubt.

16. 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.

17. Accordingly, the appeal stands allowed.

**(Sunil Kumar Panwar, J)**

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