

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL APPEAL (SJ) No.65 of 2013**

Arising Out of PS. Case No.-7 Year-2010 Thana- AGIAON BAZAR District- Bhojpur

Binay Sah @ Binay Kumar Sah S/O Krishna Sah Resident Of Village-  
Sudhni, P.S.- Udvantnagar, District- Bhojpur, Arrah

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

with

**CRIMINAL APPEAL (SJ) No. 87 of 2013**

Arising Out of PS. Case No.-7 Year-2010 Thana- AGIAON BAZAR District- Bhojpur

1. Binod Singh and Anr S/O Haridwar Singh R/O Vill- Jagjiwanpur, P.S-  
Imadpur, Distt- Bhojpur Ara.
2. Dara Singh S/O Late Chhedi Singh R/O Vill- Bhupauli, P.S- Udwant Nagar,  
Distt- Bhojpur Ara.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

**Appearance :**

(In CRIMINAL APPEAL (SJ) No. 65 of 2013)

For the Appellant/s : Mr. Achhaibar Singh, Advocate

For the Respondent/s : Mr. Satya Prakash, APP

(In CRIMINAL APPEAL (SJ) No. 87 of 2013)

For the Appellant/s : Mr. Bachan Jee Ojha, Advocate

For the Respondent/s : Ms. Anita Kumari Singh, APP

**CORAM: HONOURABLE MR. JUSTICE RAMESH CHAND**  
**MALVIYA**

**ORAL JUDGMENT**

Date : 18-11-2024

Heard Mr. Achhaibar Singh, learned counsel for  
the appellant and Mr. Satya Prakash, learned A.P.P for the  
Respondent-State in Cr. APP. (SJ) No. 65 of 2013 and Mr.  
Bachan Jee Ojha, learned counsel for the appellants and Ms.  
Anita Kumari Singh, learned APP for Respondent-State in  
Cr. APP. (SJ) No. 87 of 2013.



2. These appeals have been filed on behalf of the appellants under Section 374(2) read with Section 389(1) of the Code of Criminal Procedure, 1973 against the judgment of conviction dated 06.12.2024 and order of sentence dated 07.12.2024 rendered by the learned Adhoc Additional Sessions Judge (2<sup>nd</sup> F. T.C) Ara, Bhojpur in Sessions Trial No. 169 of 2011 and Sessions Trial No. 268 of 2011 arising out of Agion Bazar P.S. Case No. 07 of 2010, whereby the appellants have been convicted for the offences punishable under Section 395, 414 and 411 of the Indian Penal Code and sentenced to undergo Rigorous Imprisonment for ten years and fine of Rs. 5,000/- and in default of payment of fine, the appellants shall have further to undergo one month of simple imprisonment.

3. The brief facts leading to the filing of this present appeal is that, as per fardbeyan of the informant, namely, Dina Nath Singh recorded by Sub Inspector R.S. Prasad of Aglaon Bazar P.S. on 26.1.2010 at 13:15 Hours in Agiaon Bazar P.S. is in brief, is that informant has sixteen *bighas* of land for cultivation. He has purchased a Swaraj Tractor on loan sanctioned through Punjab National Bank,



Nonadiah for agricultural purpose bearing Registration No. BR3C-3946, Engine No. 391331/F.P. 006031, Chassis No. V. C. A. 30605002251. Further, it is stated that the aforesaid tractor was given to one Harendra Rai owner of brick-kiln situated at Sukhruli on hire and driver was his villager, namely, Wakil Chaudhary. Further, it is stated that on 25.01.2010 the driver was coming from brick-kiln of Nityanand Pandey with one trailer loaded coal for the brick-kiln of Harendra Rai at 6 P.M. When he reached near the primary school at the distance of 200 yards from village Tiwaridih, four miscreants asked him to stop tractor but he did not stop then all miscreants forcibly raided on the tractor and caught hold clothes of driver from backside then all of them took the driver and brought towards south near *mahuwa* tree and tied his hands and feet by muffler and *gamchha* and they took away the tractor towards Ojhwalia by the path of Bahri Mahadeo and near Jagdishpur Tola tractor was detached from the trailer and fled away with the tractor. Further, it is stated that the driver by opening tied of his feet and reached at the brick-kiln of Harendra Rai in the position of tied hands towards back where labourer of that



brick-kiln opened the tied hands of the driver then driver told about the occurrence to the *Munshi* of that brick-kiln, namely, Akhilesh Mishra who has informed to the owner of that brick-kiln and then owner of brick-kiln informed the owner of tractor (informant) then informant on that day at 8 P.M. came to residence of Harendra Rai where he knew all the occurrence from his driver and on the basis of that he has given his *fardbeyan* before police.

4. On the basis of aforesaid *fardbeyan* and FIR bearing Agian Bagar P.S. Case No. 07 of 2010 dated 26.01.2010 under Section 392 of Indian Penal Code against unknown four miscreants has been instituted and police has started investigation. After completing the investigation police has submitted the chargesheet against Vinay Sah and Binod singh under Section 395 and 414 I.P.C. *vide* Chargesheet No. 26/10 dated 24.04.10 and kept investigation open against four accused persons, namely, Bhushan Singh, Raj Singh, Pawan Chaudhary and Dara Singh and, then after completing the investigation against the accused, Dara Singh chargesheet No. 08 of 2011 against Dara Singh was issued and it was accordingly proved.



Thereafter, the case was committed to sessions court on 12.11.2011 accordingly, cognizance has been taken on 30.04.2010 separating the case of the accused persons against whom investigation was going on.

5. During the course of the trial, the prosecution examined altogether thirteen witnesses, namely, P.W -1 Dinanath Singh, P.W-2 Wakil Chaudhary, P.W-3, Ramdayal Sah, P.W-4, Shri Krishna Sah, P.W-5 Ayodhya Tiwari, P.W-6 Ujjwal Kumar Tiwari, P.W-7 Ramsundar Prasad, P.W-8 Ramakant Kumar Singh, P.W-9 Ramashish Yadav, P.W-10 Rajan Tiwari @ Sanjay Tiwari, P.W-11 Triloki Kumar, P.W-12 Ramkewal Paswan, P.W-13 Dhanraj Singh.

6. In this present case, PW-1 is the informant and the owner of the tractor and has stated in the *fardbeyan*, he is a hearsay witness, while the PW-1 has also stated that the accused persons/appellants had also approached the PW1 for giving the tractor on hire. PW2 is the main witness / victim, as well as the victim, as well as the driver of the tractor, who was tied up and removed from the tractor while he was driving the tractor. PW 2 has stated similar facts as to the Fardbeyan and the same



has also been stated in the cross-examination of the victim/driver. PW3 and PW4, are both formal witnesses. PW5, PW6, PW 11 are hostile witnesses. PW8, PW9, PW13 are formal witnesses out of which the PW9 and PW13 are the police officials who recovered the tractor and arrested Appellant namely, Binay Sah. PW7 is the first investigating officer in this case while PW 12 is the second investigating officer in this present case.

7. Learned counsel appearing on behalf of the appellant submitted that there are no independent witnesses to support the prosecution case and only the family members or the staff of the informant came forward and give deposition which cannot be relied upon. It is further submitted that no circumstantial evidence or substantive piece of evidence is brought before the trial court to prove the alleged prosecution story. The names of the accused persons came out on the basis of the confessional statement of one accused / appellant Binay Sah. Further learned counsel for the appellant submits that no TIP was conducted by the police officials during course of investigation for identification of the accused persons. Learned counsel



further submits that the confessional statement of co-accused, has no legal value, and it is not admissible as per Section 25 of the Indian Evidence Act.

8. Learned APP for the state vehemently, opposed the contention of the learned counsel for the appellant and has submitted that the entire evidences and witnesses substantiates the prosecution case and exhibits along with other witnesses and evidence is available on record are conclusive in nature of all the accused persons/appellants is proved beyond all reasonable doubt.

9. From perusal of the entire evidences in the records available, it is evident that the police officials were patrolling on the road, they saw a tractor upon which four persons were sitting. Upon reaching near the tractor, three persons fled away from the tractor, while one person remained seated on the tractor. Further, it appears that, upon interrogation from the sole person who was sitting on the tractor who was detained by the police officials. Thereafter, a confessional statement of the accused/appellant - Binay Sah was taken by the police officials. It is a well settled law that a confessional statement made before a police official is



not admissible in the court. On the basis of the confessional statement, five other accused persons were also taken into custody is also evident from the entire record that nothing incriminating was found from the accused Binay Sah other than the fact that he stated to have been found sitting on the tractor on the road by the police officials and the confessional statement given by him to the police, which is not admissible. It is further evident here that the seizure list has to be signed by independent witnesses but in this present case the same has not been done and is also not there in the evidence. Further, a copy of seizure list was also not given to the accused/appellant and signature of the accused/appellant on the seizure list is also not present and thus provision under section 100 of the Cr.P.C which is mandatory provision has not been followed, creating a doubt on the prosecution case, but the provision is also not followed here which further vitiates the investigation and the prejudices the trial conducted and the order of conviction passed by the learned trial court. Considering these facts, the appellant Binay Sah @ Binay Kumar Sah is acquitted and the appeal of Binay Sah @ Binay Kumar Sah is allowed.



10. Coming to the case of second set of appellants, namely Binod Singh and Dara Singh, it is evident that the appellants have been convicted under section 395 and 414 of the IPC. The Section 395 of Indian penal code deals with punishment of dacoity, the ingredient and requirement of section 395 is that persons committing or attempting to commit robbery must be five or more, which includes the person present in adding and all such persons should act conjointly. But in this present matter, five persons were convicted for the offence punishable under Section 395 and 414 while Binay Sah @ Binay Kumar Sah was convicted under Section 411 of the Indian Penal Code and also under Section 395 of Indian Penal Code by trial court. The appellant Binay Sah as held in the preceeding paragraph, has been acquitted of all charges and as such the main ingredient of Section 395 of I.P.C i.e., robbery must be committed by five or more persons is not fulfilled and hence, the charge against Section 395 of I.P.C on second set of appellants namely, Binod Singh and Dara Singh are also entitled for acquittal under the above mention Section 395. The conviction of the second set of appellants under Section



395 does not stand the same is hence, set aside and they are acquitted.

11. Further Section 414 is also not proved against the accused persons as the findings, that nothing was recovered from the conscious possession of second set of appellants namely Binod Singh and Dara Singh and further the basis on which the appellant Binay Sah has been acquitted is also applicable to these appellants and henceforth the conviction under Section 414 of the IPC for this set of appellants is also set aside.

12. This court is of the view that the prosecution has not proved its case beyond all reasonable doubt and in such circumstances, it is justified to acquit the appellants as per the discussions made in the preceding paragraphs.

13. In view of the above, the judgment of conviction dated 06.12.2012 and order of sentence dated 07.12.2012 passed in Sessions Trial No. 169 of 2011 and Sessions Trial No. 268 of 2011, arising out of Agion Bazar P.S. Case No. 07 of 2010 (G.R. No. 264 of 2010), by learned Adhoc Additional Sessions Judge (2<sup>nd</sup> F.T.C) Ara, Bhojpur is set aside and the appellant is acquitted of



all the charges. The appellant is set at liberty. Bail bond  
executed, if any, shall stand canceled.

14. Accordingly, appeal is allowed.

**(Ramesh Chand Malviya, J)**

Mayank/-

|                   |            |
|-------------------|------------|
| AFR/NAFR          | NAFR       |
| CAV DATE          | NA         |
| Uploading Date    | 21.11.2024 |
| Transmission Date | 21.11.2024 |

