

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.461 of 2014

Arising Out of PS. Case No.-153 Year-2010 Thana- ARER District- Madhubani

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Rabiya Begam @ Rabiya Khatoon, wife of Anish, resident of Village -
Auraiya, P.S. - Auraiya, District - Auraiya (U.P.).

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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with

CRIMINAL APPEAL (DB) No. 272 of 2014

Arising Out of PS. Case No.-153 Year-2010 Thana- ARER District- Madhubani

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Raj Kishore Thakur, Son of Kallu Thakur, resident of Village - Auraiya, P.S. -
Auraiya, District - Auraiya (U.P.).

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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with

CRIMINAL APPEAL (DB) No. 276 of 2014

Arising Out of PS. Case No.-153 Year-2010 Thana- ARER District- Madhubani

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- 1. Jagdish Singh, Son of Bhanwar Singh;
- 2. Om Prakash Jat, Son of Laxman Singh;
- 3. Lakhpat Jat @ Lakh Pat, Son of Munnilal;
- 4. Dara Singh, Son of Bhanwar Singh;
- 5. Laxmi Devi, Wife of Mani Ram;
- 6. Rekha Devi, Wife of Ram Sanjeevan;
All resident of Village - Bhojpur, P.S. - Kadir Chowk, District - Badayun (U.P.).
- 7. Shyamlal Jat @ Shyam Lal, Son of Gobardhan Jat, resident of Dhanpura, P.S. - Kadir Chowk, District - Badayun (U.P.).

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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with

CRIMINAL APPEAL (DB) No. 640 of 2023

Arising Out of PS. Case No.-153 Year-2010 Thana- ARER District- Madhubani

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Rajendra Thakur, Son of Basulal Thakur, resident of Village - Dhanupura, P.S. - Kadar Chowk, District - Badayun (U.P.).

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

(In all the Appeals)

For the Appellant/s : Mr. Rama Kant Sharma, Sr. Adv.



For the State : Mr. Gagan Deo Yadav, Adv.
Mr. Abhimanyu Sharma, APP
Mr. Dilip Kumar Sinha, APP

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 11-12-2024

All the appeals have been taken up together
and are being disposed off by this common judgment.

2. Heard Mr. Rama Kant Sharma, the
learned Senior Advocate assisted by Mr. Gagan Deo
Yadav, the learned Advocate, for all the appellants in the
afore captioned appeals and Mr. Abhimanyu Sharma &
Mr. Dilip Kumar Sinha, the learned Additional Public
Prosecutors for the State.

3. The appellants, viz., Rabiya Begam @
Rabiya Khatoon [*Cr. Appeal (DB) No. 461 of 2014*]; Raj
Kishore Thakur [*Cr. Appeal (DB) No. 272 of 2014*];
Jagdish Singh, Om Prakash Jat, Lakhpat Jat @ Lakh Pat,
Dara Singh, Laxmi Devi, Rekha Devi and Shyamlal Jat @



Shyam Lal [*Cr. Appeal (DB) No. 276 of 2014*] and Rajendra Thakur [*Cr. Appeal (DB) No. 640 of 2023*] have been convicted for the offences under Sections 395 and 412 of the Indian Penal Code (*in short the IPC*) vide judgment dated 11.02.2014 passed by the learned 3rd Additional Sessions Judge, Madhubani in Sessions Trial No. 356 of 2011, arising out of Arer P.S. Case No. 153 of 2010 (G.R. No. 2898 of 2010). By order dated 13.02.2014, they have been sentenced to undergo R.I. for ten years, to pay a fine of Rs. 10,000/- each and in default of payment of fine, to further suffer R.I. for three months for the offence under Section 395 of the IPC and to undergo imprisonment for life, to pay a fine of Rs. 10,000/- each and in default of payment of fine, to further suffer R.I. for three three months for the offence under Section 412 of the IPC. The sentences have been ordered to run concurrently.

4. The records reveal that an amount of Rs. 5,22,432/- was looted away from the North Bihar



Gramin Bank, Kapasiya Branch, falling under the territorial jurisdiction of Arer Police Station in the night intervening between 07th and 08th of December, 2010.

5. The FIR with respect to the occurrence was lodged by one Yogendra Prasad Sahu (the informant/P.W. 3), the officiating Branch Manager of the said Kapasiya Branch. At about 05:30 A.M. in the morning of 08.12.2010, he (P.W. 3) received information on his mobile telephone that there was a *dacoity* in the Bank. Learning about that occurrence, he came to the Bank and found out that in the previous night, the *Chaukidar*/Sone Lal Yadav was restrained on gun-point by the miscreants and the Bank was looted. Another *Choukidar*, viz., Shambhu Rai also had come looking for Sone Lal Yadav, but he too was immobilized by some of the miscreants, whereas the others had entered the Bank premises. The mobile telephone of the afore-noted *Chaukidars* was also snatched away. P.W. 3 had also found the strong room of the Bank premises to



be breached. The cash reserve in the Bank, according to the Register, was Rs. 5,24,432/- and out of that amount, almost the entire amount, viz., Rs. 5,22,432/- was found to have been taken away. The balance amount of Rs. 2,000/- was left because perhaps it was kept in an envelop and which could not fall in the gaze of the miscreants. He inquired from the *Chaukidars*/Sone Lal Yadav and Shambhu Rai about the occurrence, who told him that the miscreants were within the age-group of 25 - 30 years and some of them had their faces concealed. Those who had not covered their faces could be identified, if shown to them. The occurrence was committed within a time span of one and half hours.

6. Based on the afore-noted fardbeyan of the informant/P.W. 3, Arer P.S. Case No. 153 of 2010, dated 08.12.2010, was registered for investigation under Section 395 of the IPC.

7. During the course of investigation, the members of the Special Task Force (STF), which had



been constituted because of the several instances of Bank *dacoity* in the recent past, learnt that many persons of dubious antecedents hailing from Uttar Pradesh are camping in the house of one Guddu Singh located under the Jainagar Police Station. A raid was conducted in the wee hours of 11.12.2010 in the house of Guddu Singh. Many persons who had assembled there wanted to run away, but the STF, showing promptitude, arrested nine males and three females. They were searched in the presence of Pawan Kumar Singh and Mukesh Kumar Singh (P.Ws. 7 and 8 respectively). From the possession of the miscreants, Rs. 4,87,923/- was recovered. In some of the bundles, markings of North Bihar Keshtriya Gramin Bank was found. Apart from this, there were recoveries of three country made pistols, live cartridges and a key-ring. Other implements used for cutting iron, like hammer, iron files, pliers etc. were also recovered. All those twelve persons were arrested.

8. This is the basis for prosecuting the



appellants in the instance case.

9. Anil Kumar (P.W. 1), S.H.O. of Basopatti; Kailash Chaudhary (P.W. 2), A.S.I., Jainagar; Nisar Ahamad & Rajeshwar Prasad (P.Ws. 5 and 6 respectively), probationer Police Officers; Sanjay Kumar (P.W. 9), S.I. and Ashok Kumar Singh (P.W. 10), S.H.O. of Arer Police Station, have all testified to the fact that the STF, which was constituted for the purposes of finding out and trailing the miscreants involved in Bank *dacoities*, had arrested the accused persons/appellants from the house of one Guddu Singh and from their possession, recoveries of cash, firearms and wherewithals for committing *dacoity* in Banks were made.

10. However, curiously, we have found out that all the seizure *memos* have been recorded in two different cases, *viz.*, Jainagar P.S. Case Nos. 260 of 2010 and 261 of 2010.

11. Were the accused persons arrested in



those cases and remanded in this case or one seizure was used by the prosecution in all the cases, was the doubt raised by the appellants at the time of hearing of these appeals.

12. Rajeshwar Prasad (P.W. 6) has stated before the Trial Court that he was part of the Special Task Force with respect to the occurrence of *dacoity* in the night of 07/08.12.2010. The house of Guddu Singh was surrounded at around 2:30 A.M. on 11.12.2010. Recoveries were made at that time. However, despite his presence in the team which had conducted the raid, he could not tell the Trial Court as to the places of recovery and from whose possession was it recovered. Perhaps, a briefcase was recovered and after obtaining the keys from the accused persons, the same was opened. However, the inventory of the seizure was not made in his presence and everything was kept in open in the *Verandah* of the house.

13. Juxtaposed with this revelation by P.W.



6, we have found that the seizure list witnesses, namely, Pawan Kumar Singh and Mukesh Kumar Singh (P.Ws. 7 and 8 respectively) have not supported the case in its entirety.

14. Pawan Kumar Singh (P.W. 7) has stated that the seizure-list was prepared in his presence which he had signed. It ran in fourteen pages and he had put his signature on all the pages. The owner of the house namely, Guddu Singh was not present at the time of raid nor anyone of his family members were present. All the articles seized in the raid were kept in a tin box. He had firstly signed on some documents which did not reflect correct inventory. The money was never counted in his presence. He had signed on whatever was written by the police party. He has but denied the suggestion that because of the fear of the police, he had signed at thirteen to fourteen places on the seizure-list. It appears that he is the businessman of the locality.

15. Mukesh Kumar Singh (P.W. 8),



however being a student at the time of the search and seizure, frankly deposed before the Trial Court that only on the asking of the police, he had signed on the seizure-list without knowing the contents thereof.

16. We have also found that there is no arrest *memo* on record to ascertain ourselves that the appellants were arrested in connection with the present case. On the contrary, we have found from the exhibited documents two facts which completely belie the correctness of the prosecution version, namely, of the Task Force having arrested the appellants with the looted booty of the concerned Bank. A Police Officer of Jainagar Police Station was asked for producing the recoveries made in connection with Jainagar P.S. Case Nos. 260 and 261 of 2010, which were very similar to what was recovered in connection with this case and a request was made to the learned Magistrate for remand of the appellants in this case from Jainagar P.S. Case Nos. 260 and 261 of 2010. These two documents completely



destroy the prosecution case of the appellants having been arrested with the booty.

17. There is yet another aspect of the matter which makes us disbelieve the entire prosecution case. The currency notes were identified by the bundle markings of the concerned Bank which was initialed by the current Bank Manager. P.W. 3, the informant, was only an In-Charge Branch Manager, who claims to have identified the initials the regular Branch Manager. The regular Branch Manager, namely, Bindeshwar Sah has but not been examined.

18. That apart, two of the *Chaukidars*, one deputed by the Building Committee and the other employed by the concerned Branch of the Bank have not been examined.

19. According to P.W. 3, they had claimed that some of the miscreants were without any mask and if shown to them, they could be identified. After the so-called arrest of the appellants in connection with this case



with the looted booty on sometimes between 11th and 12th of December, 2010, they ought to have been put on Test Identification Parade.

20. Nothing of this kind was done.

21. Test Identification Parades are part of the investigative process. There is no hard and fast rule of investigation for carrying out any Test Identification Parade nor can an accused claim as a matter of right that they must be put on Test Identification Parade. But non-holding of Test Identification Parade in this case where two of the *Chaukidars* had seen the faces of some of the miscreants, only reflects that the investigation was shoddy.

22. If the story of the prosecution is correct that many persons from Uttar Pradesh had assembled at the house of Guddu Singh to commit such *dacoities* in Banks, then after the *dacoity*, they would not have waited in the same house to be the sitting ducks.

23. We have already noted that we have



serious doubts whether the appellants were arrested in connection with this case because of the absence of any arrest *memo* available on record.

24. The fact that there was a *dacoity* committed in the Bank Branch may not be doubted, but the appellants having committed that *dacoity* and having been arrested with the looted money is rendered doubtful for the afore-noted reasons.

25. These discrepancies in the prosecution case leave no room for us to connect the missing links in the case, especially with respect to the appellants.

26. We, therefore, deem it appropriate to and acquit the appellants of all the charges leveled against them after setting aside their conviction.

27. We have been informed that the appellants have remained in jail for more than ten years by now.

28. The judgment and order of conviction and sentence, referred to above, in all the appeals, are



set aside.

29. All the appeals stand allowed and disposed off accordingly.

30. Since appellant/Rabiya Begam @ Rabiya Khatoon [*Cr. Appeal (DB) No. 461 of 2014*] is in jail, she is directed to be released forthwith, if not detained or wanted in any other case.

31. Appellants/Raj Kishore Thakur [*Cr. Appeal (DB) No. 272 of 2014*]; Jagdish Singh, Om Prakash Jat, Lakhpat Jat @ Lakh Pat, Dara Singh, Laxmi Devi, Rekha Devi and Shyamlal Jat @ Shyam Lal [*Cr. Appeal (DB) No. 276 of 2014*] and Rajendra Thakur [*Cr. Appeal (DB) No. 640 of 2023*] are on bail. They are discharged of the liabilities of their bail bonds.

32. Let a copy of this judgment be dispatched to the Superintendent of the concerned Jail forthwith for compliance and record.

33. The records of these cases be returned to the Trial Court forthwith.



34. Interlocutory application/s, if any, in all
the appeals, also stand disposed off accordingly.

(Ashutosh Kumar, J)

(Rajesh Kumar Verma, J)

Praveen-II/

AFR/NAFR	NAFR
CAV DATE	N/A
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