

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.67 of 2016

Arising Out of PS. Case No.-394 Year-2004 Thana- DEHRI TOWN District- Rohtas

Mantoo @ Binod Yadav S/o Janeshwar Singh, Resident of Village - Munshi Bigha, P.S. - Barun, District - Aurangabad.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

with
CRIMINAL APPEAL (SJ) No. 83 of 2016

Arising Out of PS. Case No.-394 Year-2004 Thana- DEHRI TOWN District- Rohtas

Ramesh Paswan Son of Nanhak Paswan, Resident of Vill. - Fazalganj, P.S. - Sasaram, District - Rohtas.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

with
CRIMINAL APPEAL (SJ) No. 178 of 2016

Arising Out of PS. Case No.-394 Year-2004 Thana- DEHRI TOWN District- Rohtas

Raju Paswan Son of Muni Lal Paswan Resident of Village- Majhiyaon, Po Panch Pokhar, PS Baghaila Nokha, District Rohtas.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :
(In CRIMINAL APPEAL (SJ) No. 67 of 2016)
For the Appellants : Mr. Krishna Pd. Singh, Sr. Advocate
Mr. Bhaskar Shankar, Advocate
For the State : Mr. S.A. Ahmad, APP
(In CRIMINAL APPEAL (SJ) No. 83 of 2016)
For the Appellant : Mr. Ashok Kumar Pandey, Advocate
For the State : Ms. Abha Singh, APP
(In CRIMINAL APPEAL (SJ) No. 178 of 2016)
For the Appellant : Mr. Subash Kumar, Advocate
For the State : Mr. Binod Bihari Singh, APP



CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL ORDER

6 30-03-2026 Heard learned senior counsel appearing for the appellants and learned Additional Public Prosecutors appearing for the State.

2. Since all these three appeals arise out of the same P.S. case and same sessions trial i.e. Sessions Trial No. 200 of 2007, they are being taken up together and disposed of by this common order.

3. These three appeals have been filed challenging the judgment of conviction and order of sentence 21.01.2016 passed by the learned IXth Additional Sessions Judge, Sasaram in Sessions Trial No. 200 of 2007 arising out of Dehri P.S. Case No. 394 of 2004 whereby and whereunder these three appellants have been convicted for committing offence under Sections 399 and 402 of the Indian Penal Code and have been sentenced to undergo rigorous imprisonment for seven years with a fine of Rs. 20,000/- each under Section 399 of the Indian Penal Code, seven years of rigorous imprisonment with a fine of Rs. 20,000/- each under Section 402 of the Indian Penal Code and in case of default of fine, to further undergo rigorous imprisonment for six months. Both sentences have been directed to run concurrently.



4. The prosecution case, in brief, is that on 03.12.2004, informant, namely Yugesh Chandra, who is a Police Inspector, received secret information that some criminals are planning to loot a Kudra based businessman while he would be returning from Dhanbad to Kudra near Jamhuar Bridge. Upon receiving such information, the informant informed the S.D.P.O. who in turn, directed the informant and other police officials to nab the accused. As per directions, a raiding team was prepared and the same headed towards Jamhuar Bridge and found some persons hiding in the bushes. Upon seeing the police party, the culprits started fleeing away however, three of them were nabbed who disclosed their names as Raju Paswan (appellant), Ramesh Paswan (appellant) and Upendra Paswan, since deceased. The apprehended accused persons also revealed the names of other two persons, namely Mantoo (appellant) and Raja Mishra, who managed to flee away from the place of occurrence. Upon search, one loaded country made pistol and two live cartridges were recovered from Raju Paswan and a knife was recovered from Ramesh Paswan. The weapons were seized, the accused persons were arrested and brought to the police station.

5. In this case, the arrest and seizure took place on



03.12.2004 at about 9 PM, accordingly, an F.I.R. being Dehri P.S. Case No. 394 of 2004 was instituted on 04.12.2004 for the offences punishable under Sections 399 and 402 of the Indian Penal Code and Sections 25(1-B)A, 26 and 35 of the Arms Act. Thereafter, charge-sheet was submitted under Sections 399 and 402 of the Indian Penal Code and Sections 25(1-B)A, 26 and 35 of the Arms Act against all five accused persons and thereafter, cognizance was taken on 31.01.2005, case was committed on 11.04.2007 and charges were framed on 03.07.2007 under the same sections as in the charge-sheet. However, the prosecution did not prove the sanction which was needed and required to be given by the D.M. for prosecution under the Arms Act and hence, the accused were acquitted from the charges framed under the Arms Act.

6. In order to bring home guilt of the accused person, the prosecution has examined altogether two witnesses. P.W. 1, namely Yugesh Chandra, is informant of this case and member of the raiding team and P.W. 2, namely Devlal Dusadh, who is also member of the raiding team. The prosecution also submitted three exhibits. Exhibit 1 is the seizure list, Exhibit 2 is the self-statement of the informant/P.W. 1 and Exhibit 3 is the formal F.I.R.. On the other hand, the defence has not produced



any oral or documentary evidence.

7. After hearing the parties, the learned trial court convicted these appellants and sentenced them as indicated in the opening paragraph of this order.

8. Learned senior counsel appearing for the appellants assails the order of conviction and sentence on multiple grounds. He contends that in this case, the Investigating Officer has not been examined by the prosecution. The prosecution has only examined two witnesses and both of them are members of the raiding party and no independent witness has been examined by the prosecution. The so-called recovered arms and ammunition were neither produced before the learned trial court nor any ballistic opinion was taken from any ballistic expert. He further contends that the seizure list contains signature of two independent witnesses, namely Saryu Choudhary and Roopchand Singh, however, neither the two seizure list witnesses were examined nor any explanation has been given on behalf of the prosecution about their non-examination. The prosecution also failed to prove any prior sanction from the District Magistrate and thus, the learned trial court has acquitted the accused persons of the charges under the Arms Act and hence, the allegation that these appellants, along with other



accused persons, had assembled at the place of occurrence for committing dacoity cannot be sustained. Mere assembly of five persons at about 9 PM in the night does not prove that they had assembled for any wrongful purpose. Thus, it is a case of no evidence and prosecution has failed to prove the case beyond reasonable doubt and hence, the appellants are fit to be acquitted. In support of his contentions, learned senior counsel for the appellants has placed heavy reliance upon judgment of the Hon'ble Apex Court passed in the case of ***Chaturi Yadav versus State of Bihar*** reported in ***AIR 1979 SC 1412*** and judgment of this Hon'ble Court rendered in the case of ***Sulo Thakur versus State of Bihar*** reported in ***PLJR 2006 (4) 190***.

9. On the other hand, learned Additional Public Prosecutors for the State have submitted that there is no need of any interference in these appeals since the prosecution witnesses have supported the corroborated the prosecution story and there is no reason to differ with the findings of the learned trial court and the judgment of conviction and order of sentence are justified and legal.

10. From going through the rival submissions, evidences and upon perusal of the records, this Court finds that in this case, the Investigating Officer has not been examined by



the prosecution and therefore, this Court is bereft of all objective evidence, which would have been required to prove the place of occurrence as well as the manner of occurrence. The prosecution has neither produced the seized arms and ammunition before the learned trial court nor it has provided the sanction required from the District Magistrate or examined the seizure list witnesses or any ballistic expert. In absence of these materials, the learned trial court has rightly acquitted these appellants of the charges under the Arms Act. Moreover, there is no evidence to show that the appellants had assembled for the purpose of committing a dacoity or they had made any preparation for committing the same. The mere fact that these appellants, along with other accused persons, were found at a lonely place at 9 PM does not, by itself, prove that the appellants had assembled for the purpose of committing dacoity or for making preparations to accomplish that object.

11. From the aforementioned reasons, the prosecution has failed to bring home guilt of the accused persons beyond all reasonable doubts and thus, I find that the impugned judgment of conviction and order of sentence dated 21.01.2016 is difficult to sustain.

12. In that view of the matter, the judgment of



conviction and order of sentence dated 21.01.2016 passed by the learned Additional Sessions Judge- IX, Sasaram in Sessions Trial No. 200 of 2007 arising out of Dehri P.S. Case No. 394 of 2004 is hereby set aside.

13. Appellants are acquitted of all the charges and are discharged from the liability of the bail bond in connection with this case.

14. Accordingly, these appeals stand allowed.

15. Interlocutory application/s, if any, also stands disposed off.

(Prabhat Kumar Singh, J)

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