

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.1 of 2016**

Arising Out of PS. Case No.-75 Year-2014 Thana- PUPRI District- Sitamarhi

Hari Kumar Son of Baleshwar Raut Resident of Village- Mannan Khedu,
Police Station- Jale, District- Darbhanga

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant : Ms. Madhubala Verma, Advocate
For the State : Mr. Z. Hoda, APP

**CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL ORDER**

6 31-03-2026 Heard learned counsel appearing for the appellant and
learned Additional Public Prosecutors appearing for the State.

2. This appeal has been filed challenging the judgment of conviction dated 28.11.2015 and order of sentence dated 31.11.2015 passed by the learned A.D.J.-III, Sitamarhi in Sessions Trial No. 507 of 2014/164 of 2014 arising out of Pupri P.S. Case No. 75 of 2014 whereby and whereunder this appellant has been convicted for committing offences under Sections 395 and 412 of the Indian Penal Code and has been sentenced to undergo rigorous imprisonment for 7 years and to pay a fine of Rs. 10,000/- for committing offence under Section 395 of the Indian Penal Code and in case of default of payment of fine, to further undergo simple imprisonment for 3 months and rigorous imprisonment for 7 years and to pay a fine of Rs.



10,000/- for committing offence under Section 412 of the Indian Penal Code and in case of default of payment of fine, to further undergo simple imprisonment for 3 months. Both sentences have been directed to run concurrently.

3. The prosecution case, in brief, is that on 04.04.2014 at about 11 PM, informant, namely Jiwachh Mahto, was travelling from Keshavpur to Pupri on his motorcycle bearing Registration No. BR-7B-8504 and reached near Singhiahi bridge, one person signaled him to stop and when the informant stopped, four other persons, who were hiding, came out and started assaulting him. It is further alleged that one of the accused person inflicted knife on the left side of his chest as a result of which, he fell down and thereafter, the accused persons tied his hands and legs, snatched his motorcycle, a mobile phone and Rs. 500 cash and fled away.

4. In this case, on the basis of the *Fardbeyan* of the informant, Pupri P.S. Case No. 75 of 2014 was registered for the offence punishable under Section 394 of the Indian Penal Code against four unknown miscreants and after completion of the investigating, charge-sheet was submitted under Sections 395 and 412 of the Indian Penal Code against five accused persons and thereafter, cognizance was taken and since one of the five



accused persons was juvenile, case was committed to the learned Sessions Court with respect to four accused persons only. Accordingly, charges were framed under Sections 395, 412 and 34 of the Indian Penal Code against all four accused persons.

5. In this case, in order to bring home guilt of the accused person, the prosecution has examined altogether seven witnesses. P.W. 1, namely Ravindra Kumar Choudhary and P.W., namely Dilip Sah, are independent witnesses. P.W. 3, namely Jibachh Mahto, is informant of this case. P.W. 4, namely Yogendra Pd., is the Investigating Officer; P.W. 5, namely Santosh Mandal, is Chawkidar; P.W. 6, namely Vishal Anand is a police official and P.W. 7, namely Dr. Chandramoleshwar Singh, is the doctor. The prosecution has also adduced documentary evidences, which are marked as:-

Exhibit 1	Signature of informant on the <i>Fardbeyan</i>
Exhibit 1/1	Signature of Pappu Choudhary on the <i>Fardbeyan</i>
Exhibit 1/2	Signature of Nirmala Devi on the <i>Fardbeyan</i>
Exhibit 2	Formal F.I.R.
Exhibit 3	<i>Fardbeyan</i>
Exhibit 3/1	Endorsement on the <i>Fardbeyan</i>
Exhibit 4	Confessional statement of accused Tipu Sultan
Exhibit 4/1	Confessional statement of accused Anuj Kumar
Exhibit 5	Seizure list of looted mobile recovered from accused Tipu Sultan
Exhibit 5/1	Seizure list of mobile recovered from accused Riyaz Ahmad
Exhibit 5/2	Seizure list of mobile recovered from accused Anuj Kumar
Exhibit 5/3	Seizure list of looted motorcycle recovered from the house of accused Anuj Kumar



Exhibit 5/4	Seizure list of mobile recovered from accused Babloo Kumar
Exhibit 5/5	Seizure list of mobile recovered from accused Hari Kumar
Exhibit 6	C.D.R. of Mobile No. 9709456500
Exhibit 6/1	C.D.R. of IMEI No. 911229551738950
Exhibit 7	C.D.R. of Mobile Nos. 8521895202 and 9771315312
Exhibit 8	Page No. 154 of the injury register

6. Beside the aforesaid, the prosecution has also proved some material exhibits in support of its case i.e. Material Exhibits I to I/4 are mobile sets and Material Exhibit II is the motorcycle.

7. On the other hand, the defence has also examined one witness i.e. D.W. 1, namely Jitendra Jha, who is a formal witness and proved the Memo of Arrest of Hari Kumar (appellant) and Babloo Kumar and the same are marked as Exhibit A and A/1.

8. After hearing the parties, the learned trial court convicted this appellant and sentenced him, as indicated in the opening paragraph of this order.

9. Learned counsel appearing for the appellant assails the order of conviction and sentence on multiple grounds. She contends that in this case, name of appellant surfaced only on the basis of confessional statement of co-accused Tipu Sultan and co-accused Anuj Kumar and heavily relying on these confessional statements, the learned trial court has convicted



this appellant, however, from bare perusal of Sections 25 and 26 of the Evidence Act, it would be apparent that confession made before the police is inadmissible and the same cannot be viewed as substantive evidence and as such, no conviction can be awarded on the basis of confessional statement of co-accused persons. In this case, the appellant was not put on test identification parade and he was also not identified by the informant during trial. In trial, the informant has only identified co-accused Tipu Sultan in the dock. The seized articles were not produced and ownership of the articles was not verified and confirmed. It is further contended that in this case, except informant/P.W. 3, there is no eye witness to the occurrence. P.W. 1 and P.W. 2 are staff working in the shop of the informant and are hear say and interested witnesses. P.W. 4, P.W. 5, P.W. 6 and P.W. 7 are official witnesses. The prosecution has also failed to examine independent witnesses of seizure, which makes the recovery doubtful. Moreover, medical evidence does not support the prosecution case inasmuch as, doctor has found the injury sustained by the informant simple in nature. Thus, the prosecution has failed to prove the case beyond reasonable doubts and thus, the trial court has wrongfully convicted the appellants ignoring material contradictions and hence, the



appellant is fit to be acquitted.

10. On the other hand, learned Additional Public Prosecutor for the State has submitted that there is no need of any interference in this appeal 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 judgement of conviction and order of sentence are justified and legal.

11. From going through the rival submissions, evidences and upon perusal of the records, this Court finds that the impugned order of conviction and sentence suffers from material infirmity. The conviction of the present appellant relies heavily upon confession of co-accused persons which was made before the police, which is an extra-judicial confession and is an inadmissible evidence. In this case, the appellant is not known to the informant and neither he was put on test identification parade nor he was identified by the informant at the dock during trial. Moreover, none of the allegedly stolen articles were recovered from possession of this appellant nor any seizure witnesses were examined to support the alleged recovery of stolen articles. Save and except informant/P.W. 3, there is no independent witness to the occurrence.



12. Thus, in view of the facts and circumstances of the case, as discussed above, it is evident that the prosecution has failed to prove the guilt of this appellant beyond reasonable doubt and thus, the appellant is entitled to be given the benefit of doubt.

13. In that view of the matter, the judgment of conviction dated 28.11.2015 and order of sentence dated 30.11.2015 passed by the learned A.D.J.-III, Sitamarhi in Sessions Trial No. 507 of 2014/164 of 2014 arising out of Pupri P.S. Case No. 75 of 2014 are hereby set aside with respect to this appellant only.

14. Appellant, above named, is acquitted of all the charges and is discharged from the liability of the bail bond in connection with this case.

15. Accordingly, this appeal stands allowed.

(Prabhat Kumar Singh, J)

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