

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.79 of 2007

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Sumant Singh, Son of Sri Devendra Singh, Resident of village- Rasalpur, P.S.
Madanpur, District- Aurangabad.

... .. Appellant/S

Versus

State Of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Vipul Sinha, (*Amicus Curiae*)
For the Respondent/s : Mrs. Anita Kumari Singh, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE SUNIL KUMAR PANWAR
CAV JUDGMENT

Date : 05-04-2024

Heard Mr. Vipul Sinha, learned *Amicus Curiae*

and Mrs. Anita Kumari Singh, learned A.P.P for the

State.

2. This appeal has been preferred by the

appellant being aggrieved and dissatisfied with the

judgment of conviction, dated 26.12.2006 and order of

sentence, dated 27.12.2006 passed by the learned

Additional District & Sessions Judge, F.T.C. V,

Aurangabad in Sessions Trial No. 270/1999 and

271/2006, arising out of Madanpur P.S. Case No. 92 of

1998, whereby and whereunder appellant/ convict has

been convicted under Section 395 of Indian Penal Code



and awarded sentence to undergo rigorous imprisonment of 10 years with a fine of rupees 5,000/-(Five thousand) in default of payment of fine, he has further been sentenced to undergo simple imprisonment for 2.5 years for the offence under Section 395 of the Indian Penal code.

3. The prosecution case as per the F.I.R is that in the night of July 25-26, 1998, at about 11:30 o'clock, while the informant was gossiping with her husband in *Dalan*, in the meantime, six miscreants came there and out of them, two stood outside and rest four miscreants caught the informant and her husband. They asked to open the door. When informant's husband tried to inquire, one of the miscreants assaulted him by means of brick due to which he sustained head injuries. It is further alleged that four miscreants entered into the house of informant and started taking articles. On hearing noise, when the co-villagers and agnates began to arrive there, criminals hurled a bomb which injured



Satya Narayan Yadav. When the son of informant, namely, Manoj Yadav raised protest, miscreants fired upon him due to which he sustained injuries and began to cry. After hearing the noise and sound of firing when the neighbors came, miscreants fled away by taking away the articles worth rupees 15,000/-. All the injured were taken to Primacy Health Center with the help of villagers.

4. On the basis of the aforesaid fardbeyan of the informant, Madanpur P.S. Case No. 92 of 1998 was registered against six unknown criminals. Routine investigation followed. Charge-sheet has been submitted against the sole accused/appellant and cognizance was taken thereafter this case was committed to the Court of Sessions, Aurangabad for its trial and disposal.

5. In the instant appeal, the point of consideration is whether the prosecution is able to prove the charges levelled against the convict/appellant beyond reasonable doubt or not.



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

7. Out of them, P.W. 3 Suresh Prasad, advocate clerk formally proved the *fardbayan* and formal F.I.R. as ext. 1 and 2 respectively. P.W. 9 Bira Yadav is hostile witness. The rest are material witnesses. P.W. 1 Vijay Yadav and P.W. 2 Manoj Yadav (Victim), both sons of P.W. 4 Doman Yadav (injured) and his wife P.W. 5 Rukmani Devi (informant), P.W. 6 Matar Mala Devi, wife of Vijay Yadav (P.W. 1), P.W. 7 Radha Devi, wife of Manoj yadav (P.W. 2), P.W. 12 Satyanarayan Yadav victim's relative, P.W. 10 Ramdeo Yadav @ Rajdeo Yadav and P.W. 11 Dhananjay Singh (both villagers). Out of them P.W. 8 Sachidanand Singh, the then Judicial Magistrate 2nd Class, Aurangabad who had held the Test Identification Parade of the suspect who was identified by the aforesaid Manoj Yadav (P.W. 2) and his father Doman Yadav (P.W. 4). As per his T.I.P. parade chart (ext. 3) out of the aforesaid material witnesses, only two



witnesses P.W. 2 (Manoj Yadav) and his father P.W. 4 (Doman Yadav) have identified the sole accused (convict/appellant). In this case P.W. 5 Rukmani Devi, who is the wife of Doman Yadav (P.W. 4) and mother of P.W. 2 (Manoj Yadav) has deposed about the manner, place and time of occurrence. She deposed that she was talking to her husband at her *Dalan* where six dacoits came, assaulted her husband by pelting stone and injured his head, thereafter, they entered her house. According to her, they hit her son and took boxes out of her house. When her agnates people of her village reached there, out of them Satyanarayan Yadav (P.W. 12) sustained injury from a bomb hurled by the dacoits. She also stated that the accused persons fled away after taking boxes through the canal passes. They took away the article worth about Rs. 15,000-16,000/-. All the three injured were taken to Madanpur Government hospital and she had also gone there where her statement was recorded, to which she put her L.T.I. In



her cross examination, she admits that on account of friendship between her son, Manoj yadav and accused Sumant, as result of studying together at the school, the accused used to visit her house. So, they knew him(appellant). P.W.1 Bijay Yadav who is the son of informant deposed about the occurrence of dacoity. Other witnesses P.W. 2 Manoj Yadav and P.W. 4 Doman Yadav have also deposed in respect of manner, time and place of occurrence. They have also deposed that they have identified the appellant in Test Identification Parade.

8. P.W. 1 Bijay Yadav vide para 4 has deposed that he had not identified the accused, before the court.

9. P.W. 6 Matarmala Devi & P.W. 7 Radha Devi have deposed that they have not identified the accused, vide para 2 of their respective evidence.

10. P.W. 9 Bira Yadav has not supported the prosecution case and was declared hostile.

11. P.W. 10 Ramdeo Yadav @ Rajdeo yadav



has deposed vide para 5 of his cross examination that he has not identified any accused persons who committed the dacoity.

12. P.W. 11 Dhananjay Singh deposed vide para 5 in his evidence that he was well aware with the appellant much earlier from the date of occurrence.

13. P.W. 12 Satyanarayan Yadav who is alleged to be victim. He specifically deposed vide para 1 that he is not acquainted with the fact that who has hurled the bomb upon him. Vide para 2 he admitted the fact that the accused/appellant is his friend since childhood. Darogaji had not recorded his statement. He has specifically deposed in respect of the friendship between him and this appellant.

14. Mr. Vipul Sinha, learned *Amicus Curiae*, in defence of the appellant has assailed the judgment of conviction and order of sentence. He has submitted that the witnesses examined in this case are not reliable. They have not supported the prosecution case in their



cross examination. In this case the Investigating Officer has not been examined, due to none examination of Investigating Officer, the defence has caused prejudiced and could not raise any question in respect of contradiction disclosed from the evidence of the prosecution witnesses. It is further submitted that the learned trial Court has failed to consider and appreciate the Test Identification Parade holding in respect of this appellant by the Police appears to be quite useless because the appellant was previously known to the prosecution right from the childhood at the school stage and also the social fabric. According to the prosecution, P.W. 2 Manoj Yadav, P.W. 4 Doman Yadav and P.W. 12 Satyanarayan Yadav sustained injuries at the time of commission of dacoity but in this case the treating doctor has not been examined. Due to this the prosecution could not establish the charges levelled against the convict/appellant beyond reasonable doubt.

15. The defence of the appellant/convict is



that the accused/appellant is known to Manoj yadav, the son of informant (PW 5) from childhood. So, the convict was falsely implicated in this case. Both the villages Khesar and Rasalpur lies under Garadih Gram Panchayat. Further the defence is that the villagers of Khesar used to go to village Rasalpur to take kerosene oil and sugar from dealer, Surendra Singh, the uncle of accused. So, both the villagers knew and identified one another very well and they have concern with agricultural affairs too.

16. *In contra*, learned APP submitted that the judgment of conviction and order of sentence is fit and proper and based on consistent and cogent evidence adduced by the prosecution. Except minor contradictions, nothing major surfaced to discredit the prosecution evidence and the instant appeal is fit to be dismissed.

17. I have gone through the entire case records, oral and documentary evidence adduced on behalf of the prosecution to prove the charges levelled



against the convict/appellant. And as so, after considering the rival submissions made by the *Amicus Curiae* appearing on behalf of the appellant as well as A.P.P. for the State. Initially, the prosecution case was lodged against the unknown persons but during investigation, name of convict/appellant came in light as an accused and identified by the P.W. 2 and P.W. 4 in T.I.P. P.W. 5 (informant), P.W. 12 and other prosecution witnesses deposed that the convict/appellant was well aware with them and some P.W.s have not identified the convict/appellant at the time of adducing their deposition before trial Court. Prime witness P.W. 2 and P.W. 4 have not deposed in respect of specific overt act made by the accused/appellant during the said occurrence and nothing stolen article recovered from the conscious possession of the accused/victim. P.W. 12 Satyanarayan Yadav who is claimed to be injured during the occurrence but he has not identified the accused/appellant at the time of adducing the evidence before the trial Court.



From prosecution evidence the defence is able to prove his defence that the accused was previously known to the prosecution, right from the childhood stage and also in the social fabric amongst the villagers of both the villages. So, the evidence of P.W. 2 and P.W. 4, on the point of identification to the accused by them during TIP has no relevance. All witnesses have been cross examined by the defence and major contradictions have been surfaced from their evidence which is sufficient to discredit the prosecution witnesses. In this case PW(2), (4) and (12) are claimed to be injured during the dacoity. The treating doctor has not been examined to prove the medical report in respect of injury sustained by the injured P.W. 2, P.W. 4 & P.W. 12. So, the prosecution case is not corroborated by the medical evidence which would be fatal for it.

18. In this case, the Investigating Officer who is the important witness to prove the prosecution case was not examined. The cross examination of the



investigating officer by the defence is its very valuable right. The factum of non-examination of the Investigating Officer by the prosecution goes to show that the prosecution has not come up before the Court with clean hands. Whatever have been stated by the witnesses in their examination-in-chief could not be contradicted by the defense 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. In my view, the Investigating Officer is a material witness and non-examination of the Investigating Officer has caused definitely prejudiced the appellant since the appellant lost opportunity to cross-examine the Investigating Officer. Hence, the prosecution has failed to establish its case beyond the shadow of all reasonable doubts and the appellant is entitled to get the benefits of doubt.

19. After considering the above discussed



evidence, I am of this view that the prosecution could not prove its case beyond reasonable doubt against the convict/appellant. The judgment of conviction and order of sentence is fit to be quashed and set aside.

20. In that view of the matter, judgment of conviction dated 26.12.2006 and order of sentence dated 27.12.2006 passed by learned Additional District & Sessions Judge, F.T.C. V, Aurangabad in Sessions Trial No. 270/1999 and 271/2006, arising out of Madanpur P.S. Case No. 92 of 1998 are set aside.

21. The appellant is acquitted of all the charges after giving the benefits of doubt.

22. The appellant is all along on bail. He is discharged from the liabilities of the bail bonds.

23. Accordingly, the appeal stands allowed.

24. 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.

(Sunil Kumar Panwar, J)

Nirajkrs/-

AFR/NAFR	NAFR
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