

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.698 of 2014**

Arising Out of PS. Case No.-53 Year-2004 Thana- KATORIYA District- Banka

Ayodhi Das @ Ajodhi Das S/o Late Pucho Das Resident of Village
Ghaghrijor, P.S. Katoriya, District Banka.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Baxi S.R.P. Sinha, Sr. Advocates
Mr. Brajesh Prasad Gupta, Advocate
Mr. Brij Nandad Prasad, Advocate
For the Respondent/s : Mr. Abhimanyu Sharma, APP

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE KHATIM REZA

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 11-01-2023

By the impugned judgment and order dated 06.06.2014/12.06.2014 passed by the learned Ist Additional Sessions Judge, Banka in Sessions Trial No. 1018A of 2005/ Trial No. 410 of 2014, the appellant has been convicted and sentenced as under:

Conviction under Section	Sentence		
	Imprisonment	Fine (Rs.)	In default of fine
396 of the IPC	RI for Life	-	-

2. A *fardebayan* of the informant (PW-2) recorded by



Sub-Inspector of Police, R.K. Baitha, Officer-in-Charge, Katoria Police Station at 08:00 a.m. on 22.05.2004 is the basis for registration of F.I.R. It is the prosecution's case, as disclosed in the *fardebayan* that on 20.05.2004, marriage of the informant's brother, Kamlesh Yadav (PW-1) was solemnized whereafter the *barat* had returned to the village in the morning on 21.05.2004. In the midnight, when the ladies were singing songs 20-25 miscreants, 18 of whom were named including this appellant entered into his village and surrounded his house from all the sides. They started hurling abuses and asked them to handover all the valuables to them. The informant (PW-2) and his brothers as well as his father Resho Yadav (PW-6) protested against their conduct on which one of the miscreants assaulted his father on his mouth, left hand and left thigh with a sharp edged weapon. Resho Yadav (PW-6) sustained injuries because of which blood started oozing out from his body. The miscreants, thereafter, looted the ornaments of the female folks present in the house. Thereafter, the miscreants proceeded towards the house of co-villager, Kishan Yadav for committing crime. Kishan Yadav thereafter raised an outcry, consequent upon which accused persons, namely, Nilkanth Mandal, Ishwar Yadav and Naresh Mandal rushed towards Kishan Mandal.



Kishan Mandal is said to have exclaimed, pointing towards Ishwar Yadav, that he too was involved in such activities! It further transpires from the *fardebayan* that as Kishan Yadav had identified Ishwar Yadav, his accomplice Nilkanth Mandal hurled a bomb on Kishan Yadav (Mahto) to destroy evidence, who sustained grievous injuries and died on the spot. Thereafter the miscreants fled away towards the east and disappeared in the forest. All the miscreants were claiming to be the members of *Naxal* organisation and they were threatening the villagers of serious consequences for not joining their organisation. From the *fardebayan*, it further appears that the deceased was a cousin of the informant's grandfather. It also appears from the *fardebayan* that according to the informant the miscreants had committed *decoity* in the house of Dhokal Yadav (PW-4) also in the same night.

3. The police upon completion of investigation submitted its chargesheet for commission of the offences punishable under Sections 396 and 397 of the IPC and Section 3 and 4 of the Explosive Substances Act, 1908. As the appellant did not appear at the trial initially, his trial was split up. On 06.08.2012, the appellant was arrested whereafter the trial proceeded against him. Charge against the appellant was framed



on 06.03.2013 by the learned trial court for commission of the offences punishable under Section 396 of the Indian Penal Code and Sections 3 and 4 of the Explosive Substances Act, 1908. As the appellant denied the charges, he was put to trial. At the trial, altogether seven prosecution's witnesses were examined, including the doctor (PW-7) who had conducted the post-mortem examination. After closure of the evidence of the prosecution's witnesses, complying with the requirement of Section 313 of the Cr.P.C. questions were put by the court to the appellant eliciting his explanation regarding the circumstances which had emerged against him in the evidence of the prosecution's witnesses. The appellant, however, answered in negative all the questions which were put to him.

4. One court witness, namely, Promod Kumar Mandal was examined who proved the handwriting of R.K. Baitha who had recorded the *fardebayan* of the informant. The trial court acquitted the appellant of the charge of commission of offence punishable under Sections 3 and 4 of the Explosive Substances Act, 1908 in the absence of the requisite sanction order for prosecution, issued by the competent authority. However, based on analysis and scrutiny of the evidence on record, the trial court concluded that there were number of impelling



circumstances which depicted that this appellant was one of the persons who had conjointly committed murder while committing *decoity* and accordingly held him guilty of the offence punishable under Section 396 of the Indian Penal Code and sentenced him to undergo imprisonment for life, which judgment and order are under challenge in the present appeal.

5. We have heard Mr. Baxi, S.R.P. Sinha, learned senior counsel appearing on behalf of the appellant and Mr. Abhimanyu Sharma, learned Additional Public Prosecutor for the State.

6. Mr. Baxi, S.R.P. Sinha, learned senior counsel appearing on behalf of the appellant has submitted that in the present facts and circumstances of the case, non examination of the Investigating Officer has seriously prejudiced the appellant's case, inasmuch as, he did not have the opportunity to draw the attention of the I.O. towards the apparent contradictions in the evidence of the prosecution's witnesses. He has further submitted that PW-1 is apparently the only eye-witness to the occurrence and no other person identified this appellant as one who had participated in the commission of the offence. He has submitted that in view of apparent contradictions in the evidence of the informant (PW-2) at the trial, his evidence does



not appear to be trustworthy. He has submitted that finding of conviction recorded by the trial court of the charge under Section 396 of the IPC against the appellant is unsustainable and accordingly requires interference by this Court. He has also submitted that in any event, the conviction of the appellant of the charge under Section 396 of the IPC is wholly unjustified as he was apparently not a party to the murder of Kishan Yadav which is attributable only to the accused Ishwar Yadav and Nilkanth Mandal. He has also submitted that the prosecution witnesses have claimed to have identified the appellant with the aid of the petromax which, according to the prosecution, was burning at the time of occurrence. The said petromax was not seized. Further, according to the prosecution's case, most of the miscreants had concealed their faces but this appellant had not, and therefore, he was identified by them. Such narration of the occurrence is highly improbable and unbelievable.

7. Learned Additional Public Prosecutor appearing on behalf of the State has, on the other hand, submitted that non-examination of I.O. cannot be said to be fatal for the prosecution's case, inasmuch as, the appellant has not been able to demonstrate any actual prejudice caused to him because of non-examination of I.O.. He has also submitted that this



appellant was identified by PW-2 as one of the miscreants who had jointly committed the offence of *decoity*. He has contended that minor contradictions in the evidence of the prosecution's witnesses are immaterial for considering the culpability of the accused.

8. We have perused the impugned judgment and order of the trial court and have given our thoughtful consideration to the rival submissions advanced on behalf of the parties. It is considered apt, in the facts and circumstances of this case, to notice the evidence of PW-2 (the informant) first. In his examination-in-chief he deposed that when he was sleeping at his door, 25 persons came. They were hurling abuses and had hurled a bomb. Kishan Yadav died of the injuries caused by explosion of the bomb. He identified co-accused Ishwar Yadav and this appellant with the light emanating from a petromax. In his cross-examination, he deposed in paragraph-10 that he awoke from sleep after hearing the sound of bomb. He further deposed that the women folks in the house were crying and he (PW-2) escaped from the house and returned only after the miscreants had left. He had seen his father in injured condition and his grandfather, dead. From the evidence of PW-2 it is evident that he knew this appellant from before. He also



deposed that the splinters of the bomb had hit his father Resho Yadav (PW-6) and Kishan Yadav(deceased). Kishan Yadav died on the spot because of the injuries sustained by bomb. This witness identified the appellant, who, according to him, was present at the time of occurrence.

9. PW-1, Kamlesh Yadav, is the full brother of the informant. While supporting the prosecution's case he deposed at the trial that the accused persons had hurled bomb which had hit Kishan Yadav, who died on the spot. He also deposed that this appellant was armed with *lathi* at the time of occurrence. In his cross-examination, he deposed that none of the miscreants had concealed their faces. It is significant to note that he deposed in his cross-examination that he had not told the police that the appellant was armed with *lathi*. He further deposed that after hearing the sound of explosion of bomb he ran away from his house and returned to his house after the occurrence had taken place.

10. PW-3, though supported the case of the prosecution and that he knew the appellant, he deposed that he could not see any of the accused persons as his (PW-3) face was covered with a bed-sheet by the miscreants.

11. PW-4 also supported the prosecution's case of the



miscreants entering into his house and looting ornaments and clothes. He also supported the fact that a bomb was hurled which had hit his father who died on the spot. He, however, deposed that he could not identify the accused persons as there was no source of light.

12. PW-5, though supported the prosecution's case to the extent that the occurrence in question had taken place, he did not identify the appellant.

13. It is noteworthy that according to the evidence of PWs, 1 and 2, father of the informant (PW-2) Resho Yadav @ Kesho Yadav (PW-6) had sustained injuries. PW-6 in his deposition at the trial stated that his face was covered by the miscreants. He had not heard any outcry. He did not identify the appellant who was present in the dock.

14. PW-7, the doctor proved the handwriting of the doctor who had conducted the postmortem examination.

15. It is evident on close scrutiny of the evidence of the prosecution's witnesses that out of six witnesses to the occurrence, four have not at all identified the appellant. PW-1 in his evidence has mentioned that none of the miscreants had covered their respective faces whereas PW-2 in his deposition has stated that most of the miscreants had covered their faces,



but some of them, including this appellant had not covered their faces. It must be noted that the *fardbeyan* of the informant gives a detailed description of the occurrence and discloses the names of 18 miscreants with their parentage. PW-2, the informant, claims to be an eye-witness to the occurrence. According to him, his father Resho Yadav (PW-6) was assaulted by the miscreants with a sharp edged weapon. Resho Yadav (PW-6) in his evidence has not supported the prosecution's case that he had sustained any injury. No injury report showing injury on the person of PW-6 has been proved. It further appears from the *fardbeyan* that after committing the crime in the house of PW-2 (the informant) the miscreants had proceeded towards the house of deceased Kishan Yadav and when Kishan Yadav identified Ishwar Yadav, the accused Nilkanth Mandal had assaulted the deceased with a bomb. It is noticeable, at this juncture, that PW-2 in his cross-examination deposed that he was sleeping at the time of occurrence and he got up from his sleep only after hearing the sound of bomb. It thus appears from the evidence of PW-2 that he was not an eye-witness to the occurrence. Further, there is substantial contradiction in the evidence of PW-1 and PW-2 on the point as to whether the miscreants had put on something to conceal their faces or not.



16. Further, PW-6 has not supported the prosecution's case that he had received any injury caused by a sharp edged weapon. PWs. 1 and 2 in their depositions have stated that after hearing the sound of explosion of bomb they had fled away from the house. It was PW-2 who awoke PW-1, who too was sleeping when the bomb had exploded. Further, for the first time, PW-1 deposed at the trial that the appellant was found carrying a *lathi* when the occurrence had taken place, which vital fact he had apparently not disclosed before the police during the course of investigation.

17. Considering the evidence of the prosecution's witnesses, in the Court's opinion, PW-1 and PW-2 do not appear to be eye-witnesses to the presence of this appellant as one of the *dacoits* who had come to their house to commit *dacoity*. In our considered view, in the facts and circumstance discussed hereinabove it would be unsafe to uphold the conviction of the appellant based on the evidence of PW-1 and PW-2 as noticed above.

18. Accordingly, the impugned judgment and order of the trial court dated 06.06.2014/12.06.2014 passed by the learned Ist Additional Sessions Judge, Banka in Sessions Trial No. 1018A of 2005/ Trial No. 410 of 2014 are set aside.



Appellant is acquitted of the charge of commission of the offence punishable under Section 396 of the IPC by extending him benefit of doubt.

19. This appeal is accordingly allowed.

20. The appellant is in custody. Let him be released forthwith, if not required in any other case.

(Chakradhari Sharan Singh, J)

(I agree)
Khatim Reza, J

(Khatim Reza, J)

gauravkr/Rajesh-

AFR/NAFR	NAFR
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