

**(2012) 12 PAT CK 0016**

**In the Patna High Court**

**Case No :** Criminal Appeal (SJ) No. 213 of 2001

|                                                       |            |
|-------------------------------------------------------|------------|
| Ajay Kumar Singh @ Ajay Kumar Singh Mahto and Another | APPELLANT  |
| Vs                                                    |            |
| The State of Bihar                                    | RESPONDENT |

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**Date of Decision :** 10-12-2012

**Acts Referred:**

Penal Code, 1860 (IPC) — Section 392, 394, 397

**Citation :** (2013) 2 PLJR 407

**Hon'ble Judges :** Sheema Ali Khan, J

**Bench :** Single Bench

**Advocate :** Ayodhya Kr. Singh, for the Appellant; Abha Singh, for the Respondent

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## **Judgement**

Sheema Ali Khan, J.—The appellants have been found guilty under Sections 392, 394 and 397 of the Indian Penal Code. Both of them have been sentenced to undergo rigorous imprisonment for ten years under Sections 394 and 397 of the Indian Penal Code but no separate sentence has been awarded u/s 392 of the Indian Penal Code. The First Information Report was instituted by Ramdeo Singh, who was posted as Cash Overseer in the Post Office at Behea. This is his case that he alongwith Shankar Dayal Rai (Head Clerk of the Post Office) had gone to the State Bank of India to withdraw Rs. 50,000/-. The informant had kept the money in a bag, slung over his shoulder and was proceeding towards the Post Office when he heard the sound of firing. He did not pay much attention to the sound of firing until a second round was fired which hit him on the back. Immediately thereafter, one of the miscreants is said to have come driving on a motorcycle and tried to snatch the bag containing the money from the informant. The informant sought help from PW-2, who entered into the scuffle with the miscreants and managed to catch hold of the miscreant and retrieve the bag containing the cash. In the meantime, it is said that two others came to the spot and tried to free the miscreant who was caught, snatched the cash and the pistol, which the Head Clerk had taken into the custody. They succeeded in snatching the pistol but could not save the miscreants as several shopkeepers

gathered at the place of occurrence. Soon thereafter, the Investigating Officer came to the place of occurrence and recorded the statement of the informant. In the First Information Report, the miscreant had disclosed his name as Ajay Kumar Singh i.e. appellant no. 1 in the present appeal. He had also disclosed that he was accompanied by Om Prakash Singh, his cousin brother.

2. Learned Counsel appearing on behalf of the appellants submits that their appears to be confusion in recording the First Information Report inasmuch as it has been recorded within ten minutes of the occurrence, which is contrary to the report of the doctor and the statement made by PW-2, who claims that they were given first aid and then the fardbayan was recorded. It is also submitted that it is unusual that Ajay Kumar Singh would reveal the name of only one miscreant, although there were three persons present at the time when the occurrence had taken place. It was argued that the Investigating Officer would have been the best person to depose that the man who was handed over to the Officer-in-charge was Ajay Kumar Singh, the failure to examine the Investigating Officer prejudices the appellants. It has also been argued that some confusion has been created by the statement of PW-2 Shankar Dayal Rai, by stating that Om Prakash Singh was caught after chase, which is not mentioned in the First Information Report and is not corroborated by the statement of PW-4, the informant.

3. This Court will begin by referring to the evidence of PW-1 Dr. Gorakh Nath Prasad who examined the informant. The doctor has stated that there were multiple puncture, blackish in colour, spread over 1" diameter which has caused swelling and bruises on the back. Apart from it, there were abrasions on the finger, knee joint and right thumb. The injuries are said to be simple in nature. Apart from injury no. 1, the three injuries have been caused by hard and blunt substance, as per the report of the doctor. It may be stated at the outset that as far as the injuries are concerned, it appears that they support the prosecution version that someone had fired, which caused the injuries described by the informant, however, the fact that the informant had received simple injuries in an occurrence where robbery was committed, would not make the appellants liable for offences u/s 397 of the Indian Penal Code, which specially requires that at the time of committing robbery or dacoity, an offender should use not only a deadly weapon to cause grievous injury or hurt, but should also attempt to cause the death or grievous harm to the person concerned which would make him liable for seven years imprisonment. Another aspect of the matter is that the prosecution has failed to prove which of the accused had fired during the commission of the crime aforesaid. In any event, this Court concludes that the appellants cannot be held guilty for the offences punishable u/s 397 of the Indian Penal Code and accordingly acquit them u/s 397 of the Indian Penal Code.

4. The case hinges on the oral evidence of PW-2 Shankar Dayal Rai and PW-4 Ramdeo Singh, the informant. PW-2 was present when the First Information Report was instituted. He has proved his signature on the First Information

Report and claims to identify the accused Ajay Kumar Singh and Om Prakash Singh. He claims to identify Om Prakash Singh for the reason that according to him, he was caught at the spot. This aspect that Om Prakash Singh was caught soon after the occurrence is not proved by the prosecution and, therefore, one thing is clear that the identification of Om Prakash Singh appears to be doubtful. Counsel for the appellants has referred to the statement made in the examination-in-chief to submit that this witness has stated that after receiving first aid, he went to the place of occurrence where the fardbayan of PW-4 was recorded. Referring to the evidence of PW-1, the doctor, it is submitted that the doctor has stated that he examined the informant at 2 PM on 11.1.1989. On the basis of the aforesaid contradiction in timing, it is submitted that there appears that there is a possibility that the names of the appellants have been added as an afterthought.

5. In direct contrast of the evidence of PW-2, the informant (PW-4) has stated in this context that he had handed over Ajay Kumar Singh to the Investigating Officer immediately after the occurrence. According to PW-2, the Investigating Officer came to the place of occurrence immediately after it took place. Therefore, this Court cannot give great importance to the difference of timing. It seems that PW-2 in his enthusiasm has overstated his case. It may also mean that the first aid was given on the spot and thereafter the statement of the informant was recorded.

6. Referring to the evidence of PW-4, the informant, learned Counsel for the appellants has emphasized on two facts. Firstly, it is submitted that PW-4, the informant, claims that he could not identify Ajay Kumar Singh and Om Prakash Singh in the dock on the ground that his eyesight has become weak for the past two years to the extent that he can only make out hazy figures. On the other hand, this witness has stated that he had traveled on a bus by himself without any aid or help. On reaching Ara, he had managed to reach the Court premises without support and finally, he has been helped outside the Court by someone to reach the Court room. It is, therefore, argued that the informant has not identified Ajay Kumar Singh as the person who was caught on the spot and handed over to the Investigating Officer. The second issue has been raised on behalf of the appellant Om Prakash Singh, which is that the informant has not stated that Om Prakash Singh was caught while he was trying to run away after the occurrence. This fact would have been ascertained by the Investigating Officer who has not been examined in this case. Regarding the aforesaid submission, this Court finds that the Counsel for the appellants has rightly pointed out that on the basis of the sole evidence of PW-2 Shankar Dayal Rai, which contradicts the evidence of the informant, PW-4 as he does not mention this aspect of the matter and the fact that it is not mentioned in the First Information Report, would lead to the conclusion that Om Prakash Singh could not have been convicted as there is a lacuna in the prosecution case with respect to his presence at the place of occurrence. According, Om Prakash Singh, appellant no. 2, is acquitted of the charges levelled against him.

7. It may be noted that the informant and PW-2 have not given any explanation as to why they did not show the money which they had withdrawn from the State Bank of India to the Investigating Officer. This Court finds that the case of the prosecution cannot be thrown out on this ground as there is no reason for the informant or the PW-2 to implicate Ajay Kumar Singh for the offences alleged. Lastly, Counsel for the appellants submits that the occurrence took place 20 years ago and that Ajay Kumar Singh has remained in custody in this case for one year and, therefore, this Court should take a lenient view.

8. Considering that the informant and PW-2 were able to save the money and the fact that Ajay Kumar Singh perhaps was very young at the time of occurrence being about 18-19 years of age, this Court finds that the period already undergone by him would be sufficient in the facts as stated aforesaid. In the result, this appeal is partly allowed to the extent mentioned aforesaid. Both the appellants are discharged from the liabilities of the bail bonds furnished earlier in this case.