
(2014) 01 PAT CK 0093

In the Patna High Court

Case No : Criminal Revision No. 94 of 2003

Saudagar Mahto and Mithlesh Yadav

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 07-01-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 114, 403

Evidence Act, 1872 — Section 114

Penal Code, 1860 (IPC) — Section 380, 411, 457

Citation : (2014) 01 PAT CK 0093

Hon'ble Judges : Aditya Kumar Trivedi, J

Bench : Single Bench

Advocate : Madan Kumar, Addl. P.P. Incharge, for the Respondent

Final Decision : Allowed

Judgement

Aditya Kumar Trivedi, J.—Because of absence of learned counsel for the petitioners for the days together lastly, after hearing learned Additional Public Prosecutor the matter has been posted for judgment is also found permissible u/s 403 Cr.P.C. Initially, apart from petitioners, Saudagar Mahto, Mithilesh Mahto, Mahindra Yadav and Azad Yadav (since acquitted) also faced trial and vide judgment dated 04.07.1997 passed in G.R. No. 1316 of 1994 by Shri Chandra Shekhar Pradhan, Judicial Magistrate, 1st Class, Nawada, petitioner Saudagar Mahto has been found guilty for an offence punishable under Sections 457, 380 IPC while Mithilesh Mahto has been found guilty for an offence punishable u/s 457 IPC, 380 IPC as well as 411 IPC while Mahindra Yadav and Azad Yadav were acquitted. Each of petitioners Saudagar Mahto as well as Mithilesh Mahto have been directed to undergo R.I. for three years as also slapped with fine of Rs. 1000/- in default thereof to undergo S.I. for three months additionally u/s 457 IPC, R.I. for one year as well as fine of Rs. 5000/- in default thereof to undergo S.I. for two months additionally u/s 380 IPC. While petitioner Mithilesh Mahto has been directed to undergo R.I. for six months u/s 411 of the IPC. The aforesaid judgment of conviction and sentence was challenged by the petitioners

Saudagar Mahto and Mithilesh Mahto under Cr. Appeal No. 1 of 1997/147 of 1997 and the same was dismissed by the First Additional Sessions Judge, Nawada vide judgment dated 28-11-2002 with certain modification in sentence relating to 457 IPC reducing from 3 years to 2 years while maintaining the fine portion as well as with regard to other sections.

2. Informant Rajendra Mistri lodged fardbeyan on 21-10-1994 disclosing therein that in between of night of 20/21-10-1994 he after closing his mill had gone to his house. On the following morning when he came found the unknown thieves took away his electric motor, two amplifier, holy books of Ramayana, Mahabharata and Gita as well as cash appertaining to Rs. 1100/- after lurking house trespass. He had shown suspicion against Saudagar Mahto who about four months ago had taken away electric wire, bulb, holder but subsequently had returned.

3. After registration of the case, the police swung into action and during course thereof, on 21-10-1994 itself apprehended Saudagar Mahto who during course of interrogation made inculpatory extra judicial confession and on whose pointing out Darwaja of Mithilesh Mahto was dug where from electric motor was seized as well as the remaining items were seized from the field of Kishun Mistri and for that seizure list was prepared. Accordingly, after concluding investigation charge sheet was submitted whereupon trial commenced and concluded in a manner as indicated above the subject matter of instant revision.

4. During course of trial altogether seven PWs have been examined out of whom PW-1 Sheo Balak Mahto, as well as PW-4 Kali Prasad Yadav, the FIR attesting witnesses are not on the point of search and seizure while PW-2, Vijay Mistri, PW-3 Uday Prasad and PW-5 Raghuveer Singh are over search and seizure. They have also exhibited the seizure list as well as their signature over the respective document. PW-6 is the informant while PW-7 is Suryadeo Narayan Singh, the Investigating Officer.

5. After scrutinizing the findings of the respective courts in consonance with the evidence available on the record, prosecution had tried its best to support the factum of recovery of electric motor at the instance of petitioner Saudagar after dogging Darwaja of Mithilesh as well as recovery of other items from the field of Kishun Mistri. However is found suspicious in the background of Ext.-5, the seizure list where from it is evident that the recovery was made from northern-western corner of Aagan of Mithlesh Yadav having buried and the list of article has been shown as GEC Motor No. 7766200/26, two amplifier. From perusal of Ext. 5, it is evident that it did not speak having been recovered at the instance of petitioner Saudagar Mahto nor it contains signature of Saudagar Mahto as well as Mithlesh Yadav or his family members. At the other hand PW-2, PW-3, PW-5 have clearly stated that amplifiers were seized from the field belonging to Kishun Mistri. The aforesaid event is found suspicious after going through evidence of informant PW-6, para-6 wherein he had admitted that Saudagar Mahto was earlier under his employment. Now he has installed his own mill. He has tried to

explained by divulging that wages relating to his employment have already been cleared.

6. The most surprising feature as is evident from evidence of PW-6, informant as well as PW-7 the Investigating Officer with regard to absence of T.I. parade of the articles so recovered although the informant have disclosed that during course of investigation the articles were received by him by an order of Court.

7. True it is that the presumption under the aegis of Section 114 of the Cr.P.C. happens to be when there is recovery of stolen article relating to complicity of accused also during course of theft in spite of having positive and concrete evidence against the accused on that very score but on account of deficiency so persisting as disclosed above did not justify application of presumption under the guise of Section 114 of the Evidence Act. Furthermore, the change of location, as per Exhibit-5 happens to be northern inside western corner of Aagan while PW-2 under para-2 the recovery was at the Darwaja, out side the house at "Bhandar Kon". PW-3 from the Aagan of house, PW-5 from the Aagan of house, PW-6 (informant) from the Aagan of the house. PW-7 during examination-in-chief at para-3 had not stated that after arrest of Saudagar Mahto he had confessed and at his instance recovery was made from the house of Mithlesh Yadav. Thus, the successive finding recorded by the learned lower courts did not justify its sustenance and on account thereof, are set aside. Petition is allowed. Petitioners are on bail hence are discharged from its liability.