

IN THE HIGH COURT OF JHARKHAND AT RANCHI

(Against the Judgment of Conviction dated 11.08.2010 and Order of Sentence dated 13.08.2020 passed by the Additional Judicial Commissioner-VIII (FTC) Ranchi in S.T.No.225 of 2009)

Cr. Appeal (S.J.) No. 383 of 2011

Firoz Ansari, son of Jainul Ansari, resident of Kutte P.O. & P.S. Sikidiri, District-Ranchi. Appellant
Versus
The State of Jharkhand Respondent
With

Cr. Appeal (S.J.) No. 786 of 2010

Bhola Singh, son of Jagdish Singh, resident of village Bari, P.O. & P.S.-Manika, District-Latehar Appellant
Versus
The State of Jharkhand Respondent

P R E S E N T

HON'BLE MR. JUSTICE SUBHASH CHAND

For the Appellants : Mr. Sanjay Kumar Saraswat, Advocate
For the State : Mrs.Nehala Sharmin, Spl.P.P.
[In Cr. Appeal (S.J.) No.383 of 2011]
: Mr. P.D.Agrawal, Spl.P.P.
[In Cr. Appeal (S.J.) No. 786 of 2010]

Order No.13 dated 28.06.2024

Both these appeals have been directed against the one and same Judgment relating to the same case crime number so both are decided by the common Judgment.

2. Criminal Appeal (S.J.) No. 383 of 2011 on behalf of Firoz Ansari and Cr. Appeal (S.J.) No.786 of 2010 on behalf of Bhola Singh have been directed against the Judgment of Conviction dated 11.08.2010 and Order of Sentence dated 13.08.2010 passed by the Additional Judicial Commissioner VIII (F.T.C.) Ranchi in S.T. Case No. 225 of 2009 whereby the

appellants/accused were convicted for the offence under Section 412 of the Indian Penal Code and sentenced to undergo R.I. for five (5) years.

3. The brief facts of the prosecution case leading to these Cr. Appeals are that the informant Kanchan Kumar Ghosh in his "*fardbeyan*" has made the allegation that on 03.12.2008 he reached to Canera Bank at 9:40 O' clock. At 10 O' clock cashier Mandan Lal, clerk Rajiv Kumar and sweeper Deepak entered in the Gate of Bank and again the Gate was closed and an amount of 1,73,266/- cash was withdrawn and same was handed over to cashier Mandan Lal Verma. Thereafter clerk Rajiv Kumar was at the counter to pass the cheques at 10:10 O' clock the Gate of the Bank was opened for the customers. The Police Guard of the Bank had not come till then. He placed the cheques to pass the same before the Manager. At the same time one boy came to him snatched the phone and thrown it on the ground. He was armed with a pistol and asked to the informant to hand over his mobile. The informant placed his mobile on the table. At the same time 2 or 3 more boys also intruded in the Bank. One was standing in front of clerk Rajiv Kumar. He was also armed with pistol and two of them intruded in the cash counter and these assailants on the pointing of pistol looted away 1,73,120/- rupees and also the mobile phone bearing no. 9431182773, 9430222636, 9931696746 and 9835750276.

4. On this written information case crime No. 396 of 2008 was registered under Section 395 of I.P.C. against the five unknown miscreants and during investigation the offence under Section 412 was also enhanced.

5. The Investigating Officer after having concluded the investigation filed charge-sheet against the accused Bhola Singh, Firoz Ansari, Kapil Manjhi, Golu Ansari @ Gullu Ansari and Rafique Ansari to the Magistrate concerned. The Magistrate concerned after having taken the cognizance on the charge-sheet committed the case for trial to the Court of Judicial Commissioner, Ranchi who further transferred the same to the Additional Judicial Commissioner-VIII (F.T.C.) Ranchi for trial.

6. The trial court framed charge against the accused persons under Sections 395 and 412 of I.P.C., the same was read over and explained to them and both the accused persons denied the charge and claimed to face the trial.

7. On behalf of prosecution to prove the charge against the accused persons examined altogether 14 witnesses P.W.1-Rajeev Kumar, P.W.2-Madan Lal Verma, P.W.3-Basu Pariyar, P.W.4-Kanchan Kumar Ghosh, P.W.5-Binod Kumar Mahto, P.W.6-Dilip Oraon, P.W.7-Dharma Dayal Sahu, P.W.8-Pradeep Kumar Sah, P.W.9-Neeraj Kumar, P.W.10-Kaushalya Nand Choudhary, P.W.11-Rajeev Ranjan, P.W.12-Krishna Kumar Sah, P.W.13-Shrawan Sukla and P.W.14-Awdhesh Prasad Rai and in

documentary evidence filed Ext-1 signature of the informant P.W.4 on the fardbeyan, Ext-2 signature of Binod Kumar on the seizure list (photo state copy), Ext-3 and 3/1 are signatures of Dharm Dayal Sahu, P.W.7 and Pradeep Kumar Sah P.W.8 on the same. Ext.-4 to 6 confessional statement of Bhola Singh, Firoz Ansari and Rafique Ansari, Ext-7 fardbeyan, Ext-8 formal F.I.R., Ext-9 seizure list related with Firoz Ansari and Ext-9/1 signatures of K.K.Sah P.W.12 on the seizure list, Ext-10 challan of material exhibit, Ext-11 forwarding letter to bring the material exhibit in the court. Material Ext-1,2 and 3 are Rs. 100,000/-, Rs. 10,000/- and one Reliance mobile phone respectively.

8. The statement of the accused under Section 313 of Cr.P.C. was recorded. All the accused persons denied the incriminating circumstances in evidence against them and told themselves to be innocent.

9. No defence evidence was adduced on behalf of the accused persons.

10. The learned trial court after hearing the rival submissions of parties, passed the impugned Judgment of Conviction under Section 412 of I.P.C. against the accused Bhola Singh and Firoz Ansari and acquitted from the offence of 395 of I.P.C. Remaining three accused were also acquitted from the charge framed against them.

11. Aggrieved from the impugned Judgment of Conviction and Sentence the appellant Bhola Singh filed Cr. Appeal (S.J.) No. 786 of 2010 and Firoz Ansari filed Cr. Appeal (S.J.) NO. 383 of 2011.

12. I have heard the learned Counsel of appellants and learned A.P.P.s on behalf of the State and perused the materials on record.

13. In order to decide the legality and propriety of the impugned Judgment of Conviction and Sentence, prosecution evidence requires reappreciation of the same which is reproduced here-in-below:

13.1 **P.W.1-Rajiv Kumar** in his Examination-in-chief stated that occurrence was of 03.01.2008. He was head clerk in Canara Bank and was working on his seat it was 9:50 O' clock. When he had reached at 10:10 O' clock four miscreants intruded in the Bank. One of them pointing pistol on his temple and other staff of the Bank was also threatened on the pointing of pistol and looted away 1,73,120/- rupees. The siren was blown and thereafter the Police came. The miscreants were unknown. **He did not participate in the Test Identification Parade.**

13.2 **P.W.2-Mandan Lal Verma** is also the clerk of Canara Bank Branch Kusai Doranda. He also stated that the miscreants who had come and threatened him and the Manager

as well and on the pointing of pistol they looted away 1,73,120/- rupees. The mobile phone of Rajiv Ranjan and a mobile phone of one customer was also looted by them. The miscreants were unknown. In cross-examination this witness says that **he did not participate in any Test Identification Parade.**

13.3 **P.W.3-Basu Pariyar** in his Examination-in-chief says that he had gone to the Bank on 03.12.2008 at 10:15 O' clock to withdraw the rupee. All of sudden the unknown miscreants armed with the gun intruded in the Bank and they also looted away the money from the Bank and a mobile phone No.9835750276 of reliance company and one mobile of Nokia company was also looted by them. In cross-examination this witness says that **all the miscreants were unknown. He did not participate in the Test Identification Parade.**

13.4 **P.W.4 is Kanchan Kumar Ghosh** the informant. This witness in his Examination-in-chief says that he is informant of this case. On 03.01.2008 at 10:10 O' clock in the Bank Madan Lal Verma, Rajiv Kumar one sweeper Deepak were present. He had handed over the cash of 1,73,266/- to cashier Madan Lal Verma. All of sudden 3-4 miscreants intruded the Bank and they having threatened on the point of gun looted away 1,73,120/- rupees. He had also given the description in regard to the identity of the miscreants in his *fardbeyan*. He identifies

his signature on the *fardbeyan* and marked Ext.1. In cross-examination this witness says he **did not participate in Test Identification Parade to identify any of the miscreants.**

13.5 **P.W.5-Binod Kumar Mahto** in his Examination-in-chief says the seizure memo bears his signature marked Ext.2 with the objection. **Nothing was recovered in his presence by the Police.** This witness was declared hostile and cross-examined by the prosecution. He denied the statement under Section 161 of Cr.P.C. given to the I.O.

13.6 **P.W.6-Dilip Oraon** in his Examination-in-chief says that the seizure memo bears his thumb impression. **Nothing was recovered in his presence by the Police.** He has no knowledge of the occurrence. He was also declared hostile and in cross-examination by the prosecution he denied the statement under Section 161 of Cr.P.C. given to the I.O.

13.7 **P.W.7 is Dharma Dayal Sahu.** He says that on the photo copy of the seizure memo which is Ext.3 bears his signature. His signature was taken by the Police. **Nothing was recovered by the Police in his presence.** He had no knowledge of the same. He was also declared hostile and cross-examined by the prosecution denied the statement under Section 161 of Cr.P.C. given to the I.O.

13.8 **P.W.8-Pradeep Kumar Sah** in his Examination-in-chief says that the seizure memo bears his signature marked Ext.

3/1. He has no knowledge of the occurrence. He was also declared hostile and cross-examined by the prosecution. He denied the statement under Section 161 of Cr.P.C given to the I.O.

13.9 **P.W.9-Neeraj Kumar** is the Investigating Officer. He in his Examination-in-chief says that on 03.01.2008 he was posted with the Police Station, Argora as Police Station In-charge. On 03.12.2008 he received the information in regard to the dacoity in Canara Bank, Doranda Branch. In order to arrest the accused persons of the dacoity S.S.P., Ranchi has constituted a special Team. He was also the members of the same and on 11.12.2008 on the secret information this came of the Police nabbed the accused Bhola Singh, Rafique Ansari, Sahid Ansari, Firoz Ansari and Kapil Manjhi and from the possession of Firoz Ansari one country made pistol was recovered and from the possession of each of the five accused the mobile phone, rupees 2400/- and 2500/- were recovered in personal search. He also recorded the confessional statement of Bhola Singh which is in his handwriting and signature marked Ext.4. He also says that the confession of Sahid Ansari was recorded by Rajiv Ranjan Sub-Inspector, Doranda Police Station. The photo copy of his confessional statement he identifies marked Ext. 5 and 6. In cross-examination this witness says on the basis of the confessional statement on the pointing of Bhola Singh the 1000 notes of 100 rupee were recovered from the box and seizure

memo of the same was also prepared by him. In cross-examination this witness says **the notes which were recovered, the same are not produced by him before the Court. In the seizure memo of the currency notes there is no denomination of the notes.** It is true that generally notes are wrapped in Bank wrapper. **He had no knowledge in regard to the identity of the looted notes.** He has not investigated the case.

13.10. **P.W.10 Kaushalya Nand Choudhary** in his Examination-in-chief says that he had taken over the investigation of this case. The *fardbeyan* of Kanchan Kumar Ghosh was also recorded. This *fardbeyan* in his handwriting and forwarding in his signature. Formal F.I.R. was also prepared on the basis of the *fardbeyan* marked Ext.8. He inspected the place of occurrence. The seizure memo of notes bears his signature which is already marked as Ext.Y. On the confessional statement of Firoz Ansari and on his pointing out from his house 10,000/- rupees was recovered. Seizure memo of the same is marked Ext.5. In cross-examination he says that the denomination of the looted notes was not mentioned and the number of the looted notes were also not mentioned. **No T.I.P. was conducted in regard to the identity of the looted currency notes because on the wrapper there was seal of the Bank. He also says that during investigation no T.I.P. was**

conducted in regard to the identity of the suspected miscreants.

13.11 **P.W.11-Rajiv Ranjan** is then Sub-Inspector of Police, Doranda. This witness says that he recorded the confessional statement of the accused Sahid Ansari and Kapil Manjhi which are in his pen and signature marked Ext. 10 and 10/1. In cross-examination this witness says the Investigating Officer did not record his statement.

13.12 **P.W.12-Krishna Kumar Sah.** He is also one of the members of special Team who conducted the raid to nab the accused persons. He also says that in the confessional statement all the accused persons had confessed their guilt and from the house of Firoz Ansari 10,000/- rupee of Canara Bank which was wrapped were recovered. Seizure memo of the same was prepared bears his signature marked Ext. 9/1. In cross-examination this witness says no T.I.P. was conducted in regard to the identity of the seized currency notes. No T.I.P. was conducted of the suspected accused.

13.13 **P.W.13-Shrawan Sukla.** He is also the member of the special Team who had conducted the raid to nab the accused persons. He also says that from the house of Bhola Singh on his confessional statement and pointing out rupees 1000 notes of 100 each total 1,00,000/- was recovered from his house. In

cross-examination this witness says no T.I.P. was conducted in regard to the identity of the seized notes.

13.14 **P.W.14 is Awdhesh Prasad Rai** says that on the direction of the Station Officer In-charge of the Police Station Doranda in case crime No. 396 of 2008 the material Ext. is being produced by him before the Court. 100 notes of 1000 rupee total 1,00,000/- **material Ext.1** on which there is wrapper of Canara Bank is produced by him and 100 note of rupees 100 total 10,000/- are **material Ext.2**. The mobile phone of reliance company **material Ext.3**. In cross-examination this witness says he has no personal knowledge in regard to these material Exts. He is not the charge-sheeted witness.

14. The learned trial court by passing the impugned Judgment of Conviction has held guilty to the appellant Bhola Singh and Firoz Ansari for the charge under Section 412 of I.P.C. and has acquitted both these appellants from the charge under Section 395 of I.P.C. The remaining three more accused against whom the charge-sheet was also filed have also been acquitted from both the charge under Section 395 and 412 I.P.C.

15. In order to prove the offence under Section 412 of I.P.C. it would be relevant to give the provision of **Section 412 of I.P.C.** which is reproduced here-in-below:

412. Dishonestly receiving property stolen in the commission of a dacoity.- Whoever dishonestly receives or retains any stolen property, the

possession whereof he knows or has reason to believe to have been transferred by the commission of dacoity, or dishonestly receives from a person, whom he knows or has reason to believe to belong or to have belonged to a gang of dacoits, property which he knows or has reason to believe to have been stolen, shall be punished with [imprisonment for life], or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

15.1 From the very perusal of Section 412 of I.P.C. the prosecution has to prove the two ingredients in order to bring the charge under Section 412 of I.P.C. (i) **dishonest receiving or retaining any stolen property; the possession whereof he knows or has reason to believe to have been transferred by the commission of dacoity** (ii) **dishonestly receives from a person, whom he knows or has reason to believe to belong or to have belong to a gang of dacoits; property which he knows or has reason to believe to have been stolen.**

16. On behalf of the prosecution to prove the charge under Section 412 of I.P.C. have produced the witness of the seizure memo of the currency notes which are alleged to be stolen property of commission of dacoity. **P.W.5 Binod Kumar Mahto, P.W.6 Dilip Oraon, P.W.7 Dharma Dayal Sahu, P.W.8 Pradeep Kumar Sah** all these are the witness of the seizure memo of the notes **though all the four witnesses have identified their signature on the seizure memo; but they have categorially narrated that nothing was**

recovered in their presence and they know nothing in regard to the seizure memo. The Police has taken their signature on the same. Though these witnesses of seizure memo have turned hostile, yet in cross-examination by the prosecution no contrary conclusion could be drawn in their statement.

16.1 On behalf of the prosecution to prove the seizure memo, although **P.W.9-Neeraj Kumar P.W.10 Kaushalya Nand Choudhary, P.W.11-Rajiv Ranjan, P.W.12-Krishna Kumar Sah, P.W.13-Shrawan Sukla** all these Police personnel have proved the seizure memo of the currency notes which are alleged to have been recovered on the confessional statement of the appellants/convicts Firoz Ansari and Bhola Singh; yet all these witnesses in their cross-examination have narrated that in the seizure memo there is no denomination and numbers of any currency notes which were recovered from the house of the appellants/convicts on their confessional statement.

16.2 Further all these witnesses have also said that **they did not participate in any T.I.P. in regard to the identity of the currency notes which were recovered on the confessional statement of the appellants.**

16.3 So far as the prosecution witness **P.W.1 Rajeev Kumar, P.W.2 Madan Lal Verma, P.W.3-Basu Pariyar** and

P.W.4-Kanchan Kumar Ghosh are concerned, these are all the Bank officials of Canara Bank who were present at the time of occurrence in the Bank. **All these witnesses have stated that they could not identify any of the miscreants at the time of occurrence who had looted away the amount of 1,73,260/- and also the mobile phones of the Bank official and some customers as well. All these witnesses have stated that they did not participate in the T.I.P.**

16.4 **P.W.10** is the Investigating Officer of this case. He has also stated that during his investigation **he did not conduct the T.I.P. to fix the identity of the accused persons in commission of dacoity. He also further admits that no T.I.P. was conducted in regard to the identity of the currency notes.**

17. So far as the charge under **Section 412 of I.P.C.** is concerned, the prosecution has to prove **whether the appellants/convicts from whose house the currency notes were recovered had the knowledge or they were aware that these currency notes were the stolen property out of commission of dacoity.** None of the prosecution evidence has adduced evidence to this effect that these appellants/convicts had the knowledge that these currency notes were the stolen property out of commission of dacoity in the concerned Canara

Bank. So far as the identity of the currency notes is concerned, on behalf of prosecution this effort has been made to prove that these were the stolen property on the basis of the wrapper of concerned Bank which are alleged to be the recovered currency notes. Only the Police personnel have stated that these notes contained the wrapper of the Bank. Since none of the independent witness of these seizure memo of these currency notes have stated that these currency notes were recovered in their presence, the seizure memo is not found proved beyond reasonable doubt. Admittedly, no T.I.P. was conducted in regard to the identity of these currency notes even no denomination and numbers were mentioned in the seizure memo of the recovered currency notes.

17.1 Further on behalf of prosecution none of the Bank official was produced in evidence to identify even during trial that these material exhibits which have been produced by P.W.14 Awdhesh Prasad Rai were the stolen property out of the commission of dacoity.

17.2 The Hon'ble Apex Court held in **Pramod Bhanudas Soundankar v. State of Maharashtra, (2013) 1 SCC 635 at para 6 as under:**

"Receiving stolen property pertaining to Dacoity fundamental ingredients are knowledge of the offence of dacoity or reason to believe the same."

6. The aforesaid ten accused were allegedly responsible for the dacoity. One of them, Shivaji Kale (Accused 8) disclosed

during the course of investigation that he had stolen four silver chips (weighing 1 kg each) from the residence of Rameshchandra Sawarmal Bagdiaya, and had sold the same to Pramod Bhanudas Soundankar, a jeweller. The four silver chips stolen by the accused Shivaji Kale were recovered from the shop of Pramod Bhanudas Soundankar, the appellant. Pramod Bhanudas Soundankar, the appellant was proceeded against (as Accused 11) for dishonestly having received stolen property under Sections 411 and 412 of the Penal Code, 1860 (hereinafter referred to as "IPC"), knowing (or having reason to believe) that it was stolen. The instant appeal has been filed by the aforesaid Pramod Bhanudas Soundankar, the appellant."

18. The learned A.P.P. on behalf of the State has stated that since these notes which were recovered from the house of the appellants, they failed to explain how these notes were in their possession. Herein it becomes relevant that it is the prosecution firstly who has to prove its case against the accused persons beyond reasonable doubt. Once the prosecution becomes successful in establishing its case the burden of proof subsequently shifts upon the accused persons in regard to being in possession of those notes. Since the prosecution has failed to prove its case beyond reasonable doubt, as such the burden cannot be shifted upon the accused persons.

19. Further it is also pertinent to mention here that while recording the statement of these appellants/convicts under Section 313 of Cr.P.C. no question was put to these appellants to explain in regard to being in possession of those notes; while

both the appellants have categorically stated that these notes were not recovered from their possession or from their house.

20. In view of the above, the impugned Judgment of Conviction and Sentence passed by the learned trial court needs interference. These Cr. Appeals deserve to be allowed.

21. These Cr. Appeals **are allowed**. The impugned Judgment of Conviction and Sentence passed by the trial court is hereby **set aside**.

22. The appellants are acquitted from the charge levelled against them. Their bail bonds are hereby cancelled and the sureties are discharged from liabilities.

23. Let the record of court-below be sent back along with the copy of the Judgment.

(Subhash Chand, J.)

Jharkhand High Court, Ranchi
Dated the 28.06.2024
P.K.S./A.F.R.