

**Sonu Ram Vs. State of Bihar**

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**SooperKanoon Citation :** [sooperkanoon.com/1028454](http://sooperkanoon.com/1028454)

**Court :** Patna

**Decided On :** Aug-27-2013

**Appellant :** Sonu Ram

**Respondent :** State of Bihar

**Judgement :**

IN THE HIGH COURT OF JUDICATURE AT PATNA Criminal Appeal (SJ)  
No.1117 of 2010

===== Raju @  
Rajdeo Ram, son of Mahagu Ram, resident of village/Mohalla - Baulia, P.S. -  
Sasaram, District - Rohtas. .... Appellant Versus The State of Bihar ....  
Respondent/s With Criminal Appeal (SJ) No. 1055 of 2010  
===== Sonu

Ram, son of Sri Ashok Ram, resident of mohalla - Baulia (Behind Nishant Cinema  
Hall), P.S. - Sasaram (T), District - Rohtas. .... Appellant Versus The State of  
Bihar .... Respondent/s With Criminal Appeal (SJ) No. 1111 of 2010

===== Pramod  
Kumar Pandey S/O Sri Ram Pandey Resident Of Mohalla- Alamgaj (Sasaram),  
P.S- Sasaram,(T), District- Rohtas. .... Appellant/s Versus The State of Bihar ....  
..... Respondent/s

=====

Appearance : (In CR. APP (SJ) No. 1117 of 2010) For the Appellant : None turned  
up For the Respondent : Mr. S.A. Ahmad, APP (In CR. APP (SJ) No. 1055 of

2010) For the Appellant : None turned up For the Respondent : Smt. Abha Singh,  
APP (In CR. APP (SJ) No. 1111 of 2010) For the Appellant : Mr. Ashutosh Ranjan  
Pandey, Advocate Mr. Ramanuj Tiwary, Advocate For the Respondent : Mr. Sujit  
Kumar Singh, APP

=====

CORAM: HONOURABLE MR. JUSTICE AKHILESH CHANDRA ORAL

## JUDGMENT

Date:

27. 08-2013 All these appellants, one each, have preferred 2 these appeals against their conviction and sentence for the offences under Sections 395 and 397 of the Indian Penal Code and sentenced to undergo rigorous imprisonment respectively for ten and seven years and appellants Pramod Kumar Pandey and Raju @ Rajdeo Ram are further convicted under section 412 I.P.C. and sentenced to undergo rigorous imprisonment for ten years, all such sentences are to run concurrently as awarded on 31st August 2010 by learned 2nd Additional Sessions Judge, Fast Track Court, Rohtas, Sasaram, in connection with S.T. No. 532/07, Tr. No. 286/09, arising out of G.R. Case No. 1146/07, Sheosagar P.S. Case No. 100/07.

2. None turned up on behalf of the appellant Sonu Ram and Raju @ Rajdeo Ram. Only learned counsel representing appellant namely, Pramod Kumar Pandey is present and made a submission. Since entire matter was to be taken up together for consideration even for one of the three appellants it was thought proper not to appoint any amicus curiae in the light of the decision of Apex Court in a case K.S. Panduranga Vs. State of Karnataka reported in 2013(2) PLJR 276 SC).

3. The prosecution case in short is that as reveal from fardbeyan of Md. Ayub (P.W.

6) recorded on 4th 3 August 2007 at about 4.00 a.m. at Kumhau Gate, G.T. Road, near Sheosagar, District - Rohtas at Sasaram, by Officer Incharge Sheosagar Police Station, he was driver of the Truck bearing UP21N-3678 and was going along with two drivers Md. Taufiq (P.W.7) and Khalasi Md. Irfan, (P.W.8) from

Raniganj to Muzaffarnagar (UP) carrying iron and roughly between 2.30 to 3.00 a.m. when the vehicle arrived near Kumhau Gate, he found the road obstructed by putting some boulders, he tried to proceed through flank but due to mud could not succeed, suddenly seven to eight youths wearing orange dress arrived there, out of them four to five were armed with pistol and started committing loot paat, meanwhile, he found one empty truck coming from his back side anyhow taking help of the same he left the place towards Malwar Petrol Pump, but finding police patrolling party taking their help come back to place of occurrence, all found the wrong was going on but smelling arrival of police the miscreants tried to escape. However, out of them, three accused persons (appellants) could be apprehended, who not only disclosed their names but also disclosed names of their associates (co- accused but acquitted during trial). During the exercise from both the sides there was firing and cross firing, some villagers 4 also arrived and in presence of Bhanu Pratap Singh and Munna Sah, P.Ws. 3 and 5, search was made from pockets of appellant Sonu Ram one country made looted pistol with two empty cartridges and from possession of Pramod Kumar Pandey two cartridges of 12 bore and cash Rs. 270/- snatched from P.W.7, and from appellant Raju @ Rajdeo Kumar two live cartridges of 12 bore besides two mobiles one of which was taken from co-driver Md. Taufiq and one Yellow torch were recovered. Further, from the place of occurrence some plastic chappals were also recovered. Seizure list was prepared, and further on inquiry, the informant got information from his co-driver from box inside drivers cabin the bag containing Rs. 19,350/- was also taken by the miscreants. Khalasi Md. Irfan (P.W.8) was also assaulted who sustained some injuries. The police party also got information that sometime before another truck no. RJ07G-8503 was also victimized, and seven to eight were looted. After investigation of the case charge-sheet was submitted and the case was committed to the court of session.

4. During trial, prosecution examined altogether ten witnesses besides producing following material as well as documentary evidence: Exhibit - I - Pistol 5 Exhibit - II - One cartridge 0315 bore (live) Exhibit - III to III/1 - Two used cartridge 0315 bore Exhibit - IV to IV/2 - Three live cartridge 12 bore Exhibit - V to V/1 - Two Mobiles (Nokia & Indicom) Exhibit - VI - Yellow Torck (Nippo) Exhibit - VII to VII/4 - Five note amounting Rs. 270/- And documentary evidence: Exhibit - 1 - Injury Report of

Md. Irfan Khan Exhibit - 2 - Seizure list Exhibit - 3 - Fardbeyan Exhibit - 4 - First Information Report Exhibit - 5 - Entry no. 76 dated 4.8.07 in station diary of Sheosagar P.S. Exhibit - 6 - Discription of seized material mentioned in M.R. No. 10/07 & 11/07 Exhibit - X (Marked for Identification) - carbon copy of Seizure list.

5. No evidence on behalf of the defence oral or documentary was produced, who simply denied their complicity. On consideration of the materials the trial court convicted and sentenced the appellants while acquitting co- accused.

6. It is contended on behalf of the appellants 6 that they have falsely been implicated in this case by the police, nothing was recovered from their possession and there is absolutely no material against them, but they have been convicted and sentenced.

7. On the other hand, learned Additional Public Prosecutor tried to support the findings of the court below on the ground mentioned therein.

8. Out of the ten prosecution witnesses, P.W.3 Bhanu Pratap Singh, P.W.5 Munna Sah and two seizure list eye witnesses have been declared hostile, since they did not support the prosecution version and P.W.3 simply proved his signature on the seizure list which is marked Exhibit - 2. This apart P.W.7 Md. Taufiq co-driver has also been declared hostile after his partly recorded statement stating prosecution version.

9. P.W.1 Dr. Arjun Kumar Pandey, as Medical Officer has examined the injured Khalasi Md. Irfan (P.W.8) and found following solitary simple injury: Abrasive (Abrasion) in left ear measuring  $1/2 \times 1/2$ . This injury is simple in nature.

10. P.W.2 Laxman Prasad Yadav police driver stated about being one of the members of the patrolling 7 party and got information from the informant about the wrongs being committed, immediately rushed and after some assistance three of the miscreants were apprehended, and further stated about recovery of pistol, cartridges and cash etc. but he was not sure about identification of the appellants. Further, in cross examination he says about the information received from the driver (informant) at the patrol pump and attempts to escape by the miscreants

while police party were at a distance of roughly 300 yards and in paragraph 9 he says that some boulders were removed thereafter trucks started passing through. This statement creates a doubt against prosecution version. When there was no space to move how another truck carrying informant successfully passed through without any protest from the miscreants, if at all, they were actively participating in the occurrence well armed with the fire arms.

11. P.W.4 is Yogesh Chandra another member of the patrolling party Officer Incharge of Sheosagar Police Station, likewise P.W.2 stated the same version admitted Exhibit - 2 and further proved Exhibit 3 & 4 and handed over the investigation to the A.S.I. Jag Jiwan Ram (P.W.9). He further failed to identify the miscreants due to 8 lapse of time. In cross examination he failed to explain how and why two independent cases one under the Arms Act and another were instituted for the same offence. He further admits that it was rainy season and dark night. However, in spite of firing and cross firing none could be injured. Further in para 14 contrary to prosecution version, he says that he received information about the first occurrence and made a sanha entry and how and why it is not mentioned in the first information report, failed to explain. Further, he admits no Test Identification Parade was conducted and denied appellant Pramod Kumar Pandey being apprehended from his own house.

12. P.W.6 is Md. Ayub, the informant, instead of stating about his coming from Raniganj as per prosecution version stated coming from Calcutta and further stated the prosecution version, but at the same time, states about recovery of cash and kind from the possession of the appellants. He also admits it was rainy season, dark night and in para 5 he stated that after leaving place of occurrence he could meet the police patrolling party and another attempt was taken and on coming back but in spite of lapse of about 20 minutes the miscreants could not be able to finish their job 9 rather while the informant coming back with police patrolling party, they were busy in their job. Further in para 7 he says that the appellants had fallen in water, from there, they could be apprehended and pistol was also recovered from inside of the water.

13. P.W.7 is Md. Taufiq co-driver, stated initial version of the prosecution case and seeing police party miscreants started fleeing and he during trial simply could be able to identify the appellants by face not by names and in his examination in chief itself he says about recovery he could be able to know in the morning thereafter he was declared hostile and attention was drawn towards his earlier statements, but at no point of time he is specific about what role each of the appellants committed. Further in cross examination, he admits that he was senseless and could know only about further details in the morning including recovery and apprehension of miscreants who could be introduced at that time.

14. P.W.8 namely, Md. Irfan, Khalasi of the truck and injured who identify recovered articles and also identified the appellants. In cross examination he added it was rainy season, of course, consistent about dark night and in para 5 he says immediately after sustaining injury he became 10 senseless and could become in sense only in hospital. Thereafter he could know about the recovery and apprehension of the appellants etc. he identified.

15. P.W.9 namely Jag Jiwan Ram, Investigating Officer entrusted with the investigation at police station after return of patrolling party and he has described place of occurrence in para 2 and states the road condition was very bad and he silent about any space available for passing of another truck from same direction when ill fated truck belonging two of the appellants was at halt. Again he failed to explain how two cases were instituted, no attempt was made to get statement of the appellants under section 164 of Code of Criminal Procedure.

16. P.W.10 is Ram Awtar Singh, the Thana Incharge, produced and proved material exhibit besides exhibits 5 & 6 an another cross examination he admits the same and it appears they are not consistent and even identification of the appellants was also not done satisfactorily. There is nothing to explain how the informant escaped from the place of occurrence without any protest in spite of apparently having no space to pass a truck that too was not subjected to any protest or loot paat etc

17. The major chunk of allegedly looted article cash worth Rs. 19,350/- was also not recovered from the appellants who could have been apprehended, whereas

the two eye witnesses P.Ws. 7 & 8 only came to know about their apprehension and recovery etc. in the next morning causing dark cloud against correctness of prosecution version which appears not removed, hence, all the three appellants deserve the benefit. Their conviction and sentence cannot be sustained.

18. In the result, their conviction and sentence is set aside. All the three appeals are hereby allowed. Appellant namely Pramod Kumar Pandey, is ordered to be released at once, if not behind the bars in any other case and remaining two are set free of the liabilities of respective bail bonds furnished on their behalf. (Akhilesh Chandra, J.) Rajeev/-

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