

**Rambilas Paswan Vs. State of Bihar**

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**Court :** Patna

**Decided On :** Sep-02-2013

**Appellant :** Rambilas Paswan

**Respondent :** State of Bihar

**Judgement :**

IN THE HIGH COURT OF JUDICATURE AT PATNA Criminal Appeal (SJ) No.139 of 1995 ===== 1.

Leela Sah, son of Late Jaldhar Sah 2. Karia Tatma @ Kari Das, son of Anoop Sagar Tatma, both resident of village - Mangrauni Tola Nawtoli, P.S. - Rajnagar, District - Madhubani. .... Appellants Versus The State of Bihar ....

Respondent With Criminal Appeal (SJ) No. 183 of 1995

===== Rambilas Paswan, son of Nathuni Paswan, resident of village- Ranti, P.S. - Rajnagar, District - Madhubani. .... Appellant Versus The State of Bihar .... Respondent

===== Appearance : (In CR. APP (SJ) No. 139 of 1995) For the Appellant/s : Mr. U. K. Chaudhary, Advocate Mr. Anant Kumar, Advocate For the State : Mr. S .A. Ahmad, APP (In CR. APP (SJ) No. 183 of 1995) For the Appellant/s : Mr. Binod Kumar Labh, Advocate Mrs. Archana Sinha, Advocate For the State : Mr. Binod Bihari Singh, APP

===== CORAM: HONOURABLE MR. JUSTICE AKHILESH CHANDRA ORAL

## JUDGMENT

Date:

02. 09-2013 Heard learned counsel for the appellants and learned Additional Public Prosecutor for the State.

2. Both the appeals have been preferred against conviction of three appellants for the offences under section 395 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for five years and appellant, in later case namely, Rambilas Paswan was also convicted and 2 sentenced for two years for the offences under section 412 of the Indian Penal Code as awarded by learned 1st Additional Sessions Judge, Madbhani, in Session Trial No. 62/1984/65/1986 arising out of Raj Nagar P.S. Case No. 159/1983, G.R. No. 1528/1983.

3. The prosecution case in short as reveal from fardbeyan (Exhibit -

3) of Durga Devi (P.W.3) recorded on 4th November 1983 at 4.15 a.m. at her residence is that in the previous night after finishing dinner at about 9.30 p.m. she was sleeping in the house with her husband, suddenly around 1.30 a.m. on some sound, she woke up, and found in the light of lantern, one unknown young person covering his head, she immediately got hold of him, but anyhow he could opened door of the room, consequently 4 to 5 persons including three appellants came inside and on protest started assaulting the couple by Balti, Tasla, fists and slaps etc., alarm was raised but none responded, meanwhile, the miscreants took away one white box wherein one black coat stitched at Saharsa worth Rs. 500/-, one readymade sweater, five Glass, five plastic plate, golden ring wroth Rs. 3300/-, one ear ring worth Rs. 2200/-, silver payal, chain, etc, and he also took away another green colour raxin briefcase containing some other cloths and documents relating to land. During the occurrence, informant raised alarm after miscreants left the place of occurrence. Lakhan Thakur, Jagdev, Kapileshwar came in 3 and all could know about the occurrence and during inspection it was found that four rods of the window were removed through which the miscreants got entry in the house and thereafter in the room. She further states that the person who was found alone in the room initially sustained some injuries on face caused by her nails and she

can identify others also, if produced. Further, one lathi and lungi of the miscreants was also left at the place of occurrence. The case was instituted and after investigation charge-sheet was submitted and the above named three appellants faced the trial for the offences under section 395 Indian Penal Code and appellant Rambilas Paswan for additional offence under section 412 of the Indian Penal Code.

4. To substantiate the prosecution case altogether five witnesses were examined besides producing documentary exhibits as such: Exhibit - 1 - Signature of Durga Devi on fardbeyan Exhibit - 2 - Formal First Information Report Exhibit - 3 - Fardbeyan Exhibit - 4 - Endorsement of Manju Pandey Exhibit - 5 & 5/1 - writing of Sarad Chand mishra on the injury Exhibit - 6 & 6/1 - writing of Dr. S.S. Tripathi on the injury Exhibit - 7 - T.I. Chart Exhibit - 8 - Seizure list 5. In defence there is neither any oral nor 4 documentary evidence but from the trend of cross examination it appears they have totally denied the complicity in the occurrence and started making false implication due to some enmity and on consideration of the materials aforesaid the trial court convicted and sentenced the appellants in the manner aforesaid giving rise to these two appeals.

6. It is contended on behalf of the appellants that they have falsely been implicated in this case only two witnesses examined as eye witnesses are also inconsistent with each other and even the alleged articles shown as recovered article from the house of the appellant Rambilas Paswan, apart from being common house, article though does not find figure in fardbeyan containing list of stolen articles, but ignoring all such things the appellants have been found guilty and accordingly sentenced. Learned Additional Public Prosecutor tried to support the prosecution version for the reasons mentioned in the judgment.

7. Out of five witnesses examined, P.W.1 Kali Bhandari, a witness of seizure list, has been declared hostile, except admitting in signature of seizure list he said nothing more and that too on the blank sheet and P.W.4 is Chandra Kumar Das is formal witness proved exhibit - 2.

8. P.W.2 namely Anup Ram, husband of the informant and eye witness of the occurrence comes to state about the occurrence identifying the three appellants

and one 5 more Raghbir Kamat (not faced trial) who also states about the list of articles stolen, but in deposition also said nothing about the articles said to have been recovered from the house of appellant Rambilas Paswan. Though, in para 6 he says about participating in Test Identification Parade of the articles and identifying in cross examination. He asserts that since in the year 1979 he has settled there after purchasing the land from one Giridhari Choudhary, constructed the house. He further admits appellant Leela Sah is his neighbour and denied any encroachment over his land on which he was constructing wall and disturbance being caused by Leela Sah while making any repair or white washing etc. on disputed wall. In para 12 of the cross examination he asserts that the appellant Leela Sah is the person who entered in the room from window and open the door and further he says about assault of his wife by appellants Kari Das Tatwa and Leela Sah. In para 16 he admits that appellant Rambilas Paswan took no article whereas remaining two appellants took away box and briefcase and he further admits that only appellant Leela Sah was known to him since before, but remaining two Kari Das, Rambilas Paswan could be identified only during the occurrence. Further, Kari Das for the first time was seen by him at that time. If it is so, how he could identified these two appellants by their names. There is absolutely nothing. The informant i.e. P.W.3 and wife of P.W.2 while stating 6 prosecution version has said about entry of unknown miscreants in the room for the first time and only after opening of door by him other miscreants came in and she could identify the three appellants she also stated the list of stolen articles. What was stated in her fardbeyan, she proved exhibit - 1, also said about participation in Test Identification Parade etc. In cross examination para 10, she admits about neighborhood with appellant Leela Sah, but also admits he protest white washing etc. of the wall from his land and such enmity is continued for the last twenty years. In cross examination para 11 again contrary to her husband P.W.2 she asserts first entry of the unknown person and according to her it was he who assaulted the couple she has not said anything about assault by the appellants. But, likewise P.W.2 she also said about Rambilas Paswan took nothing. These two are the only eye witnesses to the occurrence and on material points contrary to each other giving rise to dark clouds against their version and there appears nothing to remove such clouds.

9. P.W.5 is Agni Prasad Singh, Investigating Officer of the case who proved remaining exhibits and states about search in the house of Rambilas Paswan at about 9.00 a.m. in the day, case was instituted but without taking care of whether thali, Iota had recovered in the house where in the list of stolen articles was not. Seizure list was prepared and 7 put on Test Identification Parade. He also proved remaining exhibits.

10. Having regard to the facts and circumstances stated above, it appears that prosecution has not been able to remove the clouds and establish either of the charges against the appellants, who are entitled for the benefits, accordingly, both the appeals stand allowed, and consequently their conviction and sentence is set aside. The appellants are set free from the liabilities of their respective bail bonds furnished on their behalf. (Akhilesh Chandra, J.) Rajeev/-

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