

**(2010) 01 JH CK 0015****Jharkhand High Court****Case No:** None

Ruplal Ganjhu

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

**Date of Decision:** Jan. 30, 2010**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 392, 395, 411

**Citation:** (2010) 4 JLJR 403**Hon'ble Judges:** Pradeep Kumar, J**Bench:** Single Bench**Final Decision:** Allowed

### **Judgement**

Pradeep Kumar, J.

Nobody appears on behalf of the appellant on repeated call. On the request of the Court, Mr. Md. Hatim argued the case on behalf of the appellant as Amicus Curie. Heard learned Counsel for the State.

2. This appeal is directed against the judgment of conviction dated 31.03.2000 and order of sentence dated 01.04.2000 passed by Smt. Vidya Prabha Singh, learned Und Additional Sessions Judge, Hazaribagh in Sessions Trial No. 218 of 1998, by which judgment, she found the appellant, Ruplal Ganjhu guilty for the offence u/s 392 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for three years. She also find him guilty u/s 411 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for one year. However, she directed that both the sentences will run concurrently.

3. It is submitted by learned Counsel appearing on behalf of the appellant that it appears from the record that the appellant has remained in custody for about three years. The appellant was remanded in this case on 02.08.1997 and he remained throughout in custody and lastly granted bail in appeal by this Court on 23.05.2000, and as such, he has remained in custody for about three years and in that view of

the matter, the appeal may be disposed of.

4. On the other hand, learned Counsel for the State has got no objection, since, it is apparent from the record that the appellant has remained throughout in custody.

5. After hearing both the parties and after going through the evidences on record, it appears that the prosecution case was started on the basis of F.I.R. given by the informant Sunil Mahto (P.W.1) stating therein that on 01.06.1.997 at about 10.30 P.M. that when he was going with his TATA 407 truck bearing registration No. BR 13 G 1771 along with one Prayag Sao and the driver of the truck, Karambir Singh (P.W.2) and reached near the tower of forest department, he found some big borders kept on the road and the road was blocked and so he stopped his truck. As soon as he stopped his truck, three miscreants came out from the bush and one of them hit the truck with a big stone, as a result of which, the glass of the truck became damaged. Two of them, one having bhujali and other having pistol in their hands boarded in the truck and put them under fear with the pistol and started demanding money. They took away Rs. 2600/- from the pocket of the informant, Rs. 800/- from the pocket of Karambir Singh and Rs. 400/- from the pocket of Prayag Sao. They also took away their wrist watch. The informant identified the accused as Ajit Koke of village Rajhar, who was having bhujali in his hand and second one was Dipak Mahto of village Amjharia, who was having pistol. He has also claimed to have identified the third accused by face but not by name.

6. On the basis of the said F.I.R., police registered a case for the offence u/s 395 of the Indian Penal Code and after investigation submitted charge sheet for the same.

7. Since, the case was exclusively triable by the court of Sessions, learned magistrate committed the case to the court of Sessions and learned Additional Sessions Judge, Hazaribagh, subsequently tried the same and found him guilty as aforesaid.

8. It appears that in course of trial, the prosecution has examined eight witnesses.

P.W.1, Sunil Mahto, who is the informant in the case.

P.W.2, Karambir Singh, who is the driver.

P.W.3, Prayag Sao, who is the co-driver.

P.W.4, Durga Kumari Sinha, who is a seizure list witness.

P.W.5 is Agahan Ganjhu.

P.W.6 is Phirungi Ganjhu.

P.W.7 is Amir Mian.

P.W.8, Md. Kamal Khan, who is the I.O. of the case.

9. The informant, Sunil Mahto, P.W.1 has fully corroborated his evidence and stated that in course of dacoity, he identified two accused persons, but this appellant was

not identified by him and he does not know him. The articles recovered by the police were put on T.I. Parade, which he identified and he proved his signature on the T.I. Parade of the articles. He also proved his signature on the F.I.R. The driver, P.W.2, Karambir Singh has not identified the accused in the Court. The co-driver P.W.3, Prayag Sao has also not identified the accused in the Court. P.W.4, Durga Kumari Sinha has proved the seizure of the articles and stated that the witness Sunil Mahto has identified the rope, tripal, batteries, tape recorder, biscuits, etc., but the witnesses have not identified this accused, Ruplal Ganju. She proved the T.I. Parade as Ext. 1/3. P.W.5, Agahan Ganju has stated that in his presence, the house of Digambar Ganju was searched and seizure list was prepared and he has proved his signature. P.W.6, Phirangi Ganju has proved his signature on the seizure list. P.W.7, Amir Mian has also proved his signature on the recovery of tape recorder. P.W.8, Md. Kamal Khan, the I.O. of the case has identified the seized articles.

10. Thus, from the prosecution witnesses, it appears that all the three eye witnesses i.e. the informant, P.W.1, the driver, P.W.2 and the co-driver, P.W.3 have not identified the accused in the court, and since, there is no recoveries from the possession of this accused, Ruplal Ganju, his conviction is bad in law and the same is set aside.

11. In the result, this appeal is allowed and the judgment of conviction dated 31.03.2000 and order of sentence dated 01.04.2000 passed by Smt. Vidyut Prabha Singh, learned IIInd Additional Sessions Judge, Hazaribagh in Sessions Trial No. 218 of 1998 is set aside.

12. The appellant is already on bail, and hence, he is released from the bondage of the bail bond.