
(2013) 06 JH CK 0072

In the Jharkhand High Court

Case No : Criminal Appeal (S.J.) No. 616 of 2002

Anil Barhai and Others

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 28-06-2013

Acts Referred:

Penal Code, 1860 (IPC) — Section 395, 412

Citation : (2013) 3 JLJR 405

Hon'ble Judges : Dhrub Narayan Upadhyay, J

Bench : Single Bench

Advocate : A.K. Sahani and Amrita Banerjee, for the Appellant; T.N. Verma, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

Dhrub Narayan Upadhyay, J.—This criminal appeal has been preferred against the judgment of conviction dated 04.09.2002 and sentence passed on 06.09.2002 by the learned 8th Additional Sessions Judge, Hazaribagh, in connection with S.T. No. 96 of 2001, corresponding to Chauparan P.S. Case No. 194 of 2000, G.R. No. 2410 of 2000, whereby and whereunder the learned Additional Sessions Judge has been pleased to hold the appellants guilty for the offence punishable u/s 412 I.P.C. and sentenced them to undergo R.I. for 5 years. As per the prosecution case on 24.10.2000 at about 11.00 P.M. a dacoity was committed in a City Link Bus near Chandwara Out Post. The dacoits were coming in the bus along with the passengers and they have overpowered the driver and looted the passengers and after committing dacoity in the said bus, the miscreants ran-away towards the east along with the looted articles. Conductor Mahendra Kumar went to Koderma Station on a truck whereas the driver, Khalashi and the passengers of the said bus came on the main road and narrated the incident to the persons occupying other vehicles came to the spot. The villagers also assembled after which the driver along with villagers went to the direction where the miscreants had fled away. The miscreants were found

sitting near a mango orchard but seeing the people coming tried to flee away. In the meantime police patrolling party also reached to the place and 5 miscreants were apprehended after chase. On search they were found in possession of looted articles like ornaments, wrist watch, clothes, radio cash etc. The fardbeyan of the driver Chhotan Soni (P.W.1) was recorded, seizure list was also prepared and instant case as Chauparan (Barhi) P.S. Case No. 194 of 2000 for the offence punishable under sections 395 and 412 of the Indian Penal Code was registered.

2. Confessional statement of the apprehended accused persons was recorded at the spot and they were forwarded to jail custody on 27.10.2000.

3. After due investigation charge sheet was submitted and the case was accordingly, committed to the Court of Sessions and registered as S.T. Ho. 96 of 2001. The charges under sections 395 and 412 of the Indian Penal Code were framed and the appellants were put on trial.

4. In course of trial, the prosecution has examined altogether 14 witnesses and proved documents. The materials seized from the possession of the appellants were produced and marked material exhibits. The learned Additional Sessions Judge at the conclusion of the trial did not find the appellants guilty for the offence punishable u/s 395 of the Indian Penal Code and, accordingly, acquitted them for the said charge, but they have been found and held guilty for the offence punishable u/s 412 of the Indian Penal Code and sentenced as aforesaid.

5. The learned counsel appearing for the appellants has assailed the impugned judgment on various grounds that the appellants were not identified by any of the witness and the articles seized are common and easily available in the market. Some of the articles are of domestic use, which can be available in most of the houses. The articles seized were not put on Test Identification Parade and no witness has claimed those articles even at the spot after recovery of the same. Last but not the least it is submitted that the appellants were all along in custody during the trial and they have been released from custody only after an order passed by this Hon'ble Court in this appeal on 28.01.2003. They have remained in custody for about 28 months and, therefore, the sentence may be modified to the extent of period already undergone.

6. Counsel for the State has opposed the arguments and submitted that it is a well proved case; the appellants were apprehended at the spot after the occurrence with the looted articles and, as such, the impugned judgment needs no interference.

7. I have gone through the impugned judgment, documents proved and marked as Exhibits and also the statements of the witnesses recorded during the trial. It appears that P.W.1, informant, P.W.2, cleaner of the bus, P.W.3, conductor of the bus have turned hostile. They have not identified the appellants after their arrest as the persons, who were involved in commission of dacoity, but they have supported the occurrence as indicated in the fardbeyan. It further transpires that

P.W.5, P.W.7, P.W.8 and P.W. 11 have also been declared hostile by the prosecution. The case of the prosecution mainly based on the evidence of P.W.9 Suresh Prasad Gupta, A.S.I. of Police P.W. 10 Sudama Choudhari, Investigating Officer. P.W.11 Md. Muslim. P.W.12 Md. Rawani, P.W.13 Deo Narain Thakur were the passenger in the bus. Smt. Usha Devi was also traveling in the said bus but she has not shown much light on the case of the prosecution. These passenger witnesses have supported the commission of dacoity in the bus and also the arrest of the accused persons, but they did not identify them as the person, who committed dacoity in the bus.

8. Be that as it may. The learned Additional Sessions Judge did not find the appellants guilty for the offence u/s 395 of the Indian Penal Code for the reasons that the appellants were not identified by any of the witness in course of trial. The seizure list witnesses P.W.5 Laxman Prasad Yadav and P.W.6 Satendra Yadav have proved the respective seizure lists prepared against each of the accused persons. P.W.9 Suresh Prasad Gupta has stated that the appellants were apprehended and from their possession looted articles were recovered. Sudama Choudhari (P.W.10) has also supported this fact that these appellants were apprehended within few hours of the occurrence and they were found in possession of the looted articles. P.W.10 has proved the fardbeyan, seizure list and the looted articles, which were recovered from possession of these appellants.

9. Since looted articles were recovered from possession of these appellants just after the occurrence, the learned Additional Sessions Jude has rightly held them guilty for the offence u/s 412 of the Indian penal Code and, therefore, I do not feel inclined to interfere with the findings recorded by the trial Court. However, this appeal has been taken up for hearing after a lapse of 11 years and it is also apparent from the record that the appellants were in jail custody during the trial and they have been ordered to be released from jail custody only after filing of this appeal on 28.01.2003 and they have remained in custody for about 28 months, considering all these aspects of the matter, I feel inclined to relax the sentence awarded to them.

10. Accordingly, the sentence inflicted against these appellants by the trial Court is hereby modified from 5 years R.I. to the extent of the period already undergone by the appellants in custody. With this modification in the sentence, the appeal stands dismissed and the appellants stood discharged from the liability of their bail bonds.