

(1997) 02 OHC CK 0010

In the Orissa High Court

Case No : Criminal Appeal No. 62 of 1985 and Jail Criminal Appeal No. 75 of 1985

Babu alias Badal Das and Another and Bari Batra alias Kumuda

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 03-02-1997

Acts Referred:

Penal Code, 1860 (IPC) — Section 395

Citation : (1997) 2 OLR 31

Hon'ble Judges : P.K. Misra, J

Bench : Single Bench

Advocate : Shaktidhar Das, D. Nayak, A Deo, D.K. Ghosh, R. Ray and S.C. Sahoo, for the Appellant; Add. Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

P.K. Misra, J.—The two appellants in Criminal Appeal No. 62/85 and the appellant in Jail Criminal Appeal No. 75 of 1985 assail the order of conviction u/s 395, Indian Penal Code, passed by the Additional Sessions Judge, Balasore, in Sessions Trial No. 15/18 of 1984. All the appellants have been sentenced to undergo R.I. for 6 years.

2. As per the prosecution case, the appellants along with several other entered inside the house of the informant while she and her daughters (P.Ws. 2 and 3) were asleep. The culprits were variously armed. They removed all the valuables from the house of the informant after threatening the inmates. F.I.R. was lodged the next morning and after completion of investigation charge sheet was filed against the three appellants u/s 395, Indian Penal Code, as other culprits could not be apprehended.

3. Relying upon the prosecution evidence regarding complicity of the three appellants as corroborated by the evidence relating to T.I. parade, the trial Court has convicted the appellants u/s 395, Indian Penal Code, and sentenced each of

them to undergo R.I. for 6 years.

4. In those appeals, it is contended by the two sets of counsels appearing on behalf of the appellants in both the appeals that the T.I. parade was held after unexplained delay and there were several other defects in the T.I. parade. It is also contended that there is no evidence on record to show the presence of sufficient light at the place of dacoity and as such the dacoits could not have been identified.

5. P.Ws. 1, 2 and 3 are the inmates of the house and the victims. Though P.W. 1 could not identify the culprits, P.Ws. 2 and 3 have implicated the accused persons in Court. Their such evidence is also corroborated by the evidence relating to identification in the T.I. parade. All the inmates have stated that lanterns were burning inside the house at the time of dacoity and as such there was sufficient light for identifying the culprits. Since the incident must have taken appreciable time in committing the crime and taking away the materials, it is quite evident that the inmates must have seen the culprits at close quarters for appreciable length of time and as such their evidence relating to capability of the culprits can be safely relied upon. The plea of the accused persons to the effect that they were taken to police custody and shown to the witnesses before the T.I. parade was held is not borne out from the materials on record. In the absence of any material to that effect, it cannot be assumed that the police must have shown the culprits to the victims. Since there is no doubt regarding the identification of the culprits by P.Ws. 2 and 3 in Court as well as in the T.I. parade, I do not find any reason to differ from the findings given by the trial Court.

6. In view of the aforesaid discussion, both the appeals are hereby dismissed and the order of conviction and sentence is confirmed.