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**(2005) 09 JH CK 0030**

**In the Jharkhand High Court**

**Case No : Criminal Appeal No. 61 of 1994**

Bhairo Singh and Others

APPELLANT

Vs

State of Bihar (Now Jharkhand)

RESPONDENT

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**Date of Decision :** 19-09-2005

**Acts Referred:**

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

**Citation :** (2006) 1 JCR 66

**Hon'ble Judges :** R.K. Merathia, J

**Bench :** Single Bench

**Advocate :** Neelkanth Mahto, AC, for the Appellant; APP, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

R.K. Merathia, J.—This appeal is directed against the judgment of conviction and order of sentence dated 17.2.1994, passed by Shri Alakh Kumar Dubey, 1st Additional Sessions Judge, Doghar in Sessions Case No. 77 of 1991 convicting the appellants u/s 395, IPC and sentencing him to undergo R.I., for ten years each.

2. The prosecution case in short is that on 22.8.1974 between 9 and 10 p.m. at village Bara Khairwa, P.S. Jasidih, District Deoghar, the informant Arjun Prasad Rai along with his brother Sahdeo Rai was sitting in the courtyard in front of his house. It is alleged that appellants entered into the house of the informant with "lathi", "barchha", "sambal", "farsa. On the sight of the aforesaid persons, the informant and his brother, managed to go inside his house through window and bolted the door from inside. Some of the appellants entered into his shop and some broke the door and also threw bomb on the courtyard which caused injury on the leg, abdomen and hand of the informant and the left hand of his son. The informant assaulted one of the dacoits by "farsa". The brother of the informant, PW 2 identified them in the light of torch. On "hulla, PWs 1, 2 and 3 came to the scene of the occurrence but the dacoits fled away with household articles including utensils, ornaments, one radio and a sum of Rs. 725/- (Seven hundred

twenty five).

3. The appellants were charged under Sections 395 and 412, IPC. Their defence was false implication due to previous enmity. To prove previous enmity, PW 1 was examined.

4. Altogether five witnesses were examined by the prosecution. PW 1 is a neighbour and gotta of the informant, who stated that on hearing the sound of bomb-blast, he rushed towards the house of the informant with torch and saw the appellants fleeing. He learnt from the informant that appellants committed dacoity in his house and threw bomb causing injury PW 2 is the full brother of the PW 1. He stated that on hearing bomb-blast, he rushed towards the house of the informant and saw the appellants fleeing away from the house; he saw the wooden door broken and remainders of bomb-blast and also saw the informant and his son in injured condition and that the informant told him about dacoity. This witness identified the appellants in Court. PW 3 stated that on hearing sound of bomb-blast, he rushed towards the house of the informant and saw 5 to 7 persons in the northern portion of the house of the informant but he could not identify them. PW 5 also heard the bomb blast and saw the informant and his son in injured condition and found the articles of the shop scattered. PW 6 and 7 are the formal witnesses.

5. DW 1, who is Sarpanch, has stated that village of the appellants namely Punasi and the village of the informant namely Bara Khairwa are adjacent. He knows the parties. He stated that cultivating fields of the parties are adjacent. Dispute is going on between appellant No. 1 and the informant since the last 20 years. Appellant Nos. 2 and 3 are labourers, with whom there was a dispute with the informant. Appellant No. 1 was Sarpanch of Kherwa Basa Tola since 1962. There was also a dispute with regard to payment of wage.

6. The Investigating Officer has not been examined in this case. No medical evidence in support of the bomb injuries has been produced.

7. It is submitted on behalf of the appellant that I.O. has not been examined. He further submitted that admittedly there was enmity between the parties and therefore there is chance of false implication due to previous enmity. The learned trial Court has not considered the defence witness.

8. Mr. Tapas, Rai, learned Counsel for the State, submitted that the prosecution witnesses are consistent and enmity cuts both ways.

9. It was submitted on behalf of the appellants that occurrence relates to the year 1974 and appellants must be aged between 60 to 70 years at present and they have suffered this prosecution for a long time.

10. After carefully going through the materials on record, in my opinion, the prosecution has not been able to prove its case beyond all reasonable doubts. The charges u/s 412 were not proved. The allegations of causing bomb injury have not been proved. It was necessary to examine the I.O. in the facts and

circumstances of the case. The parties are known to each other. They are residents of adjacent villages. There was longstanding enmity between the informant and appellant No. 1. The trial Court has not considered the evidence of defence witness No. 1. The trial Court has not considered the evidence of defence witness No. 1. There might be some incident due to empty but it is doubtful whether the appellants committed dacoity and therefore they deserve benefit of doubt.

11. In the circumstances, this appeal is allowed. Judgment of conviction and sentence is set aside. The appellants are discharged from their bail bonds.