
(1987) 01 OHC CK 0005

In the Orissa High Court

Case No : Criminal Revision No. 285 of 1985

Bijini alias Bijaya Kumar Pattanaik

APPELLANT

Vs

The State of Orissa

RESPONDENT

Date of Decision : 13-01-1987

Acts Referred:

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

Citation : (1987) 63 CLT 449

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

Bench : Single Bench

Advocate : Y.A. Rahim, for the Appellant; Indrajeet Ray, Additional Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

K.P. Mohapatra, J.—The Petitioner has challenged the order passed by the learned Sessions Judge, Dhenkanal upholding his conviction and sentence of an offence u/s 395 of the Indian Penal Code ("I.P.C." for short)., 2. Prosecution case in short is that the informant Basanta Kumari Patnaik (p.w. 14). an Assistant Teacher of the Government Girls' High School, Talcher was living in a Government quarters in the premises of the said school. In the night of 7-7-1981 while she was sleeping with her minor children, dacoits struck the house, broke open the door, entered inside being armed with deadly weapons and decamped with cash, ornaments and other valuables after ransacking boxes, almirahs etc.. After the dacoits left she contacted the police station and soon after a Sub-Inspector of Police (p.w. 21) arrived to whom she presented the F. I. R. (Ext. 13). In course of the investigation, the Petitioner along with four others were arrested and in a test identification parade conducted by a Magistrate (p.w. 13) the informant (p.w. 14) identified the Petitioner and two others named, Puma Chandra Naik and Rajkishore Rath, Charge-sheet was submitted against the above named persons for an offence u/s 395 and two other persons for an offence u/s 412, Indian Penal Code.

3. All the accused persons including the Petitioner were tried by the learned Assistant Sessions Judge, Talcher. He acquitted two of the accused persons who were charged u/s 412, Indian Penal Code, and convicted the rest including the Petitioner u/s 395, Indian Penal Code and sentenced each of them to undergo rigorous imprisonment for seven years. The convicted accused appealed before the learned Sessions Judge who, in the impugned judgment, agreed with the findings recorded by the learned Assistant Sessions Judge and upheld the conviction and sentence.

4. The learned Courts below concurrently found that the Petitioner and two others had committed dacoity in the house of the informant (p.w. 14). They were armed with deadly weapons and had threatened the occupants of the house with dire consequences in case of resistance. They ransacked the house thoroughly and took away cash, gold ornaments and other valuables, They were not only identified by the informant (p.w. 14) at the time of commission of dacoity but also in a test identification parade which took place in the presence of a Magistrate (p.w. 13) at a later stage.

5. I have carefully considered the evidence of the informant (p.w. 14). She is an educated lady who was living alone in the quarters with her minor children when the dacoits struck. Obviously out of mortal fear though threatened with dire consequences by the armed dacoits, she did not offer any resistance. On the other hand, she, parted with cash, gold ornaments and other valuables. In course of commission of dacoity she had occasion to have conversation with the dacoits. She switched on the electric light of her bed room and it is no wonder that with the light she clearly observed the appearance of the Petitioner and two other dacoits. On 14-8-1981 p.w. 13, a Magistrate held test identification parade at Kamakshyanagar Sub-Jail where the informant (p.w. 14) correctly identified the Petitioner and the two other dacoits. The evidence of the Magistrate (p.w. 13) shows that he had conducted the test identification parade in which the informant (p.w. 14) correctly identified the Petitioner and the two other dacoits. He prepared and submitted his test identification report (Ext. 9). After considering the aforesaid evidence I am convinced that with regard to the complicity of the Petitioner with the commission of dacoity a different view cannot be taken. In this connection it is worthwhile to note that the High Court's power of revision in cases of this nature is very limited inasmuch as concurrent findings of facts recorded by the Courts below can hardly be differed from unless the views taken by them are either illegal or perverse. Further more, even though the High Court prefers to take a different view, its interference with concurrent findings of fact is unwarranted see *Bansi Lal and Others Vs. Laxman Singh*, . Exercising power of revision the findings of fact neither being illegal nor perverse cannot therefore be interfered with.

6. Mr. Rahim, learned Counsel appearing for the Petitioner, urged that the test identification parade was not properly conducted by the Magistrate (p w. 13) inasmuch as he had not been intimated in writing to conduct the test

identification parade. But it appears from the evidence of the Magistrate (p.w. 13) that he had conducted the test identification parade on the request of the Sub-Divisional Judicial Magistrate, Kamakshyanagar. As a matter of fact, he had conducted the test identification parade as would be apparent from his report (Ext. 9). The informant (p.w. 14) also stated that she had attended the test identification parade and had identified the culprits. This being the state of evidence, I fail to understand in what manner the test identification parade and the report can be thrown out of consideration as being not in accordance with law. On the other hand, the informant (p.w. 14) having seen the Petitioner and two others at the time of commission of the dacoity and as she identified them in the test identification parade held subsequently, her testimony alone is sufficient for upholding the conviction of the Petitioner for an offence u/s 395, 1. P. C.. See -Shiv Charan v. State of Haryana AIR 1987 S.C. The contention is without any substance.

7. Mr. Rahim next contended that the evidence of p.w. 14 was not properly appreciated inasmuch as there was discrepancy with regard to the Petitioner holding a weapon. It is true that she stated that the Petitioner had nothing in his hand. This discrepancy in her statement considered along with other evidence is so insignificant, in the face of a mass of strong evidence, a view in favour of the innocence of the Petitioner cannot be taken. The rule of appreciation of evidence is that wholesome view considering the pros and cons of the entire evidence is taken instead of picking and choosing discrepancy here and there. If the whole of the evidence of the case is objectively considered it would be difficult to uphold the Petitioner's innocence. Therefore, the contention is untenable.

8. Mr. Rahim lastly contended that the F. I. R. being antedated, the entire prosecution was vitiated. In support of his contention he pointed out that the F. I. R. was lodged on 8-7-1981 and was sent to the Court on 10-7-1981. The learned Sub-Divisional Judicial Magistrate however signed the order on 15-7-1981 which shows that the F. I. R. was drawn up on 15-7-1981 and was antedated showing that it was drawn up on 8-7-1981. The informant (p.w. 14) in her evidence denied that the F. I. R. was antedated. There is no other evidence to support the view that the F. I. R. was not written and drawn up on 8-7-1981. The order-sheet in G. R. Case No. 226 of 1981 shows, that on 10-7-1981 it was written- "Seen the F. I. R. No. 79/81 u/s 557/392, Indian Penal Code of O. I. C., Talcher P. S. Put up with F. F. by 30-9-1981". This order instead of being signed on the same day was signed by the learned Sub-Divisional Judicial Magistrate on 15-7-1981. If as a matter of fact, the F. I. R. had not been received in the Court on 10-7-1981 there could be no occasion to start a criminal case assigning G. R. Case No. 226 of 1981 to it and then record the order on the same date. So it seems that the F. I. R. was sent to the Court of the learned Sub-Divisional Judicial Magistrate, Talcher on 10-7-1981 but for some reason which has not been explored the learned Sub-Divisional Judicial Magistrate signed the order sheet on 15-7-1981. For this reason alone and in the absence of any other evidence it cannot be conclusively held that the F. I. R. in this case was ante dated which vitiated the

trial of the case. Therefore, on consideration of different angles based on the argument of Mr. Rahim, I am unable to agree with him and reject his contention.

9. On the above analysis, I do not find that it is a fit case to acquit the Petitioner of the serious charge of dacoity. The criminal revision is without any merit and is dismissed.