
(2018) 06 JH CK 0100

In the Jharkhand High Court

Case No : Criminal Appeal (SJ) No.1061 of 2003

Bishwanath Ram

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 29-06-2018

Acts Referred:

Indian Penal Code, 1860 — Section 382, 395, 412

Citation : (2018) 06 JH CK 0100

Hon'ble Judges : KAILASH PRASAD DEO, J

Bench : Single Bench

Advocate : Devesh Krishna, Niki Sinha

Final Decision : Allowed

Judgement

1. Heard Mr. Devesh Krishna, learned counsel for the appellants andÂ Mrs. Niki Sinha, learned Addl. Public Prosecutor appearing for the State.

2. The instant Criminal appeal has been preferred against the Judgment of conviction dated 17.07.2003 and order ofÂ sentence dated 21.07.2003,

passed by the learned 1st Addl. Sessions Judge, Fast Track Court, Garhwa in Sessions Trial No.22 of 1999 (T.R. No.207 of 2002), whereby both the

appellants have been convicted for the offence punishable under Section 395 of the Indian Penal Code and appellant No.1, Bishwanath Ram has

further been convicted for the offence punishable under Section 412 of the Indian Penal Code. The learned trial court has awarded rigorous

imprisonment for seven years for the offence committed Section 395 of the Indian Penal Code to both the appellants. So far appellant No.1,

Bishwanath Ram is concerned, he has further been awarded rigorous imprisonment for three years for the offence committed under Section 412

I.P.C.. Both the sentences are directed to run concurrently.

3. The prosecution case is based upon the written report of the informant, Keshawar Sao (P.W.6), alleging therein, that a dacoity was committed in the night of 27.01.1981 by breaking open the door and at that time, the informant's wife and her daughter, Bimla Devi (P.W.5) were present in the house, the dacoits have assaulted them and demanded the golden ornaments. The dacoits have also taken away golden ornaments, utensils, clothes, etc., from the house.

Â Â On the basis of the aforesaid 'fardbeyan' of the informant, the Police instituted First Information Report being Ranka P.S. Case No. 07 of 1981 dated 30.01.1981 corresponding to G.R. No.44 of 1981 under Section 382 of the Indian Penal Code.

4. After investigation, the Police submitted, charge-sheet vide charge-sheet No.15 dated 26.03.1983 under Section 395/412 of the Indian Penal Code against altogether 8 accused persons. One of the accused persons has died during the trial. Five accused persons have been declared absconder, for which a report was called for, by this Court and as per the report, they have also died during pendency of the appeal.

5. The cognizance of the offence has been taken against the three accused persons vide order dated 24.09.1991 and rest of the five accused persons have been declared absconder. The case has been committed to the Court of Sessions vide order dated 24.09.1991 and thus, the learned trial court on 25.09.2002, has framed the charge against both the accused/appellants, Bishwanath Ram and Sukh Bilas Ram alias Sukh Bilas Dusad @ Tuntunwa under Sections 395 and 412 of the Indian Penal Code, to which the appellants have pleaded their innocence and claimed to be tried.

6. Mr. Devesh Krishna, learned counsel appearing for the appellants has submitted that altogether seven prosecution witnesses have been examined in this case, but the investigating officer has not been examined. Learned counsel has further submitted, that as per the information, the occurrence took place in the night of 27.01.1981, but without any explanation regarding delay, the First Information Report has been lodged on 30.01.1981. He has further submitted, that the First Information Report has been lodged against unknown, but subsequently, during deposition of the witnesses, P.W.3 (Kalavati Devi) and P.W.5 (Bimla Devi), both have developed the case and have stated in the Court, that they could identify the accused,Â

Bishwanath Ram, who was involved in commission of dacoity. Learned counsel has further submitted, that as per the evidence of P.W.4 (Ayodhya

Tiwari), the Police came to the village, on the very next day of the occurrence and thereafter, they went into the house of accused, Bishwanath

Ram, from where golden ear ring and silver 'pahuncha' have been recovered from the house and the materials were identified by the informant and his wife.

Learned counsel for the appellants has submitted, that those recovered articles were never put in Test Identification Parade (T.I.P.) and those are

common articles available in the market. There is no special mark which could say that these two recovered articles belong to the informant and his family.

Learned counsel for the appellants has further submitted that the First

Information Report was lodged against the unknown and if the informant's wife (Kalavati Devi- P.W.3) and daughter (Bimla Devi- P.W.5) have

identified the accused persons during commission of the offence and the First Information Report was lodged after two days, then the

name of accused, Bishwanath Ram must have been figured in the First Information Report.

Learned counsel for the appellants has further submitted, that since the looted articles were not put in Test Identification Parade nor the Investigating

officer has been examined in this case, as such, the appellants have suffered serious prejudice, as they could not draw the attention, regarding

recovery, ownership and claim of the informant (P.W.6) about the looted articles, rather no chit of paper was produced by the prosecution to prove

that the seized materials belong to them or any special mark was found on the seized articles.

Learned counsel has further submitted that as the Test Identification Parade (T.I.P.) was neither held nor the Investigating officer has been examined,

as such, the prosecution has not proved with the definite evidence to establish that these two materials which were recovered from the house of

accused/ appellant, Bishwanath Ram belong to the prosecution party and in absence of the same, the benefit of doubt must be given in favour of the appellants.

Learned counsel for the appellants has further submitted, that since the

Investigating officer has not been examined in this case, whether seizure-list was prepared at the spot or the signature of the appellant was taken on a blank-sheet is under doubt. He has further submitted that P.W.1 (Jhagai Singh) has categorically stated that he does not know English, who is a seizure witness.

6. Mrs. Niki Sinha, learned Addl. Public Prosecutor appearing for the State while supporting the impugned judgment of conviction and order of

sentence, has submitted that the same is well-founded, on the basis of materials available on the record. Learned counsel for the State has submitted,

that during investigation, golden ring and silver 'pahuncha' have been recovered from the house of accused,Â Bishwanath Ram in presence of

Dy.S.P. and Superintendent of Police and not in the presence of Magistrate and on the basis of the confessional statement of Mangan Korba,Â the

Police found the accomplicity of accused, Bishwanath Ram and Sukh Bilas Ram alias Sukh Bilas Dusad @ Tuntunwa in commission of dacoity. Thus,

learned counsel for the State has submitted, that the impugned judgment of conviction and order of sentence warrants no interference by this Hon'ble

Court.

Learned counsel appearing for the State has further submitted that in the seizure-list, the signature of the appellant,Â Bishwanath Ram was found.

7. Learned counsel for the State has further submitted, that all the witnesses have supported the fact that golden ear ring and silver 'pahuncha' have

been recovered from the house of accused,Â Bishwanath Ram.

8. Heard, Mr. Devesh Krishna, learned counsel appearing for the appellants and Mrs. Niki Sinha, learned Addl. Public Prosecutor appearing for the

State as well as on perusal of the First Information Report, charge, evidence of seven prosecution witnesses and the exhibits, this Court is of the

opinion that the appellants were not named in the First Information Report, although the First Information Report was lodged after delay of two days.

If a person has been identified by the inmates of the house, during commission of the dacoity, and the First Information Report was lodged after two

days, the name of the accused persons must have been figured in the First Information Report. The First Information Report is a written report of two

pages, which is lengthy, but even then the name of the accused persons are not mentioned in the First Information Report. Secondly,Â Bishwanath

Ram is known to the villagers, as his house is situated at a distance of one Kilometer and taking name of Bishwanath Ram and Sukh Bilas Ram alias

Sukh Bilas Dusad @ Tuntunwa by the wife (P.W.3) of the informant and P.W.5 (daughter of the informant), is nothing but an exaggeration and

development in the prosecution case. There is no evidence that these persons were involved in commission of the offence supported by any

corroborative evidence and subsequently their names have figured on the basis of the confessional statement of Mangan Korba, coaccused before

Police, as such, these two appellants are acquitted of charge under Section 395 of the Indian Penal Code.

So far as conviction of the appellant, Bishwanath Ram under Section 412 of the Indian Penal Code is concerned, this Court perused the entire

evidence. From perusal of the entire evidence, the entire procedures adopted by the prosecution in identifying the looted property or seized property,

from the house of appellant no.1, Bishwanath Ram is in violation of the statutory principles, as laid down in the Criminal Procedure Code. If an

article was recovered, that must have been placed before the informant in Test Identification Parade in presence of learned Magistrate. Here it is a

case, where the witnesses have said that those articles have been placed by the police officer, they identified the articles of their own. Learned

counsel for the appellants has rightly submitted, that those articles having no special mark nor any paper has been produced to show that these articles

belonged to the prosecution party, rather a golden ear ring or silver Pahuncha are such common articles, which can be found in any house, as they are

commonly available in the market.

This Court has also examined the records and found that the Investigating officer has not been examined in this case, as such, this Court is constrained

to give benefit of doubt, in favour of Bishwanath Ram and thus, this Court acquits appellant no.1, Bishwanath Ram from the conviction under

Section 412 of the Indian Penal Code, as the legal material to prove the prosecution case is completely lacking in this case.

As already discussed above, this Court is of the opinion that the conviction of appellants, Bishwanath Ram and Sukh Bilas Ram alias Sukh Bilas

Dusad @ Tuntunwa under Section 395 of the Indian Penal Code is not sustainable in the eyes of law and conviction of appellant No.1, Bishwanath

Ram is also not sustainable under Section 412 of the Indian Penal Code as the prosecution has miserably failed to prove the prosecution case beyond all reasonable doubt.

9. Accordingly, the Judgment of conviction dated 17.07.2003 and order of sentence dated 21.07.2003, by the learned 1st Addl. Sessions Judge, Fast Track Court, Garhwa, in Sessions Trial No.22 of 1999 (T.R. No.207 of 2002) is hereby set aside.

10. In the result, this appeal stands allowed.

11. The appellants who are on bail, are discharged from the liability of their bail bonds.

12. Let L.C.R. along with a copy of this judgment be sent to the court concerned at once.