
(2011) 07 PAT CK 0130

In the Patna High Court

Case No : Criminal Appeal (SJ) No. 164 of 1997

Dhirendra Pandit @ Dhiren Pandit and Mathur Rishi

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 01-07-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 395

Citation : (2011) 07 PAT CK 0130

Hon'ble Judges : Anjana Prakash, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Anjana Prakash, J.—The Appellants have been convicted u/s 395 I.P.C. and sentenced to R.I. for four years by a judgment dated 29.5.1997 passed by the 2nd Additional Sessions Judge, Katihar in Sessions case No. 93 of 1986/ 47 of 1996.

2. The case of the prosecution according to one Dhaneshwar Dubey (P.W.2) is that while he was lying in his hut, unknown dacoits entered the same and committed robbery of certain articles. He did not identify any of the accused persons and, therefore, the case was instituted against unknown persons. The Appellants were arrested on suspicion and put on Test Identification Parade subsequently and identified by some witnesses.

3. During trial, the prosecution has examined nine witnesses. Out of whom, P.W.1 has supported the factum of dacoity but did not identify anyone. P.W.3 and P.W.7 are tendered witnesses and P.W.8 is a formal witness. P.W.2 is the first informant of the case and he failed to identify anyone in the dock. P.W.4 Md. Mustaque is a witness, who identified both the Appellants in dock. However, P.W.9, who was the Judicial Magistrate, who got conducted the Test Identification Parade, testified that this witness had identified only Mathur Rishi in the Test Identification Parade. P.W.5 Md. Mohsin identified the two Appellants during trial,

but from the evidence of P.W.9 I find that he was not an identifying witness in the Test Identification Parade. P.W.6 identified the two Appellants in the dock but from the evidence of P.W.9 I find that he was also not identifying witness since he was not allowed to participate in the Test Identification Parade.

4. Under the circumstances, I find that apart from the discrepant evidence of P.W.4 there is no evidence with regard to the identification of the Appellants and them having been identified in the dock after about ten years of the occurrence.

5. In the result, the appeal is allowed and the order of conviction and sentence passed against the Appellants on 29.5.1997 2nd Additional Sessions Judge, Katihar in Sessions Trial No. 93 of 1986/ 47 of 1996 is set aside. The Appellants are discharged from the liabilities of their bail bonds.