
(1999) 09 PAT CK 0138

In the Patna High Court

Case No : Criminal Appeal (S.J.) No. 191 of 1989

Gani Mian and Another

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 10-09-1999

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313

Evidence Act, 1872 — Section 24

Penal Code, 1860 (IPC) — Section 395

Citation : (2000) 1 BLJR 224

Hon'ble Judges : R.N. Sahay, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

R.N. Sahay, J.—The appellants who are father and son have been convicted u/s 395, I.P.C. and sentenced to undergo rigorous imprisonment for ten years by 2nd the Addl. Sessions Judge, West Champaran, in S. Tr. No. 109/89. Twelve other accused who were tried along with these appellants, have been acquitted because the trial Court was of the view that the evidence of identification of those accused was not trustworthy. The case of these two appellants was on a different footing. The evidence is that both the appellants were arrested by the villagers after the occurrence after two kilometres from the place of occurrence.

2. In the night of 9/10th August, 1984, when Bikram Singh of village Lachhanauta was sleeping in his house suddenly about 1,5 dacoits came from east. They entered in the Angan. The dacoits got the key from Bikram Singh and opened the Almirah and took away articles of the shop. The dacoits also took away box full of clothes and broke open lock of a box and took away ornaments which were hidden in the. ground. Some of the dacoits were holding gun and lathi. After committing the dacoity in the house of the informant, the dacoits committed dacoity in the house of Mohan Singh of same village. On hulla the villagers assembled and the dacoits ran away towards east of the village and

while receding they exploded bomb thrice. The villagers Shivrath Singh, Arfin Sah, Wakil Sah, Arjani Moian, Hassan Imam, Ramlakhan Sah and others chased the dacoits and reached village Dhumli Barsa where these two appellants were apprehended by the villagers. On arrest they disclosed their names and village. The appellant Manzoor Mian belongs to village Ramnagar Miskartoli, P.S. Ramnagar and appellant Gani Mian belongs to village Bhat Dumri, P.S. Lauria.

3. According to the prosecution, a Jhola was recovered from the possession of Manzoor Mian containing a small bomb. The appellants also disclosed the names of their associates in presence of the witnesses and the Mukhia. The confessional statement was recorded in presence of Mukhia.

4. The defence of the appellants was that they were arrested on suspicion. A number of witnesses were produced by the prosecution on the point of arrest of these appellants soon after the dacoity. The witnesses are Ramlakhan Sah, P.W. 2, Arjani Mian P.W. 3, Mohan Singh P.W. 4, Bikram Singh P.W. 5 (informant), Mansoor Hassan P.W. 6 and Hardeo P.W. 8. The evidence against these appellants is that they made confessional statement before the Mukhia.

5. The trial Court has accepted the evidence of the witnesses. The learned trial Judge held that the evidence against these two appellants was overwhelming. The statement of the witnesses are corroborated by Exts. 4 and 4/1, which are extra judicial confessional statement duly proved by P.W. 13 Sital Jaki Mukhia of Serwa Masjidwa.

6. With regard to the plea of the appellants, the learned trial Judge has observed that the statement of Gani Mian u/s 313, Cr. P.C. is that he was returning after doing work at 4 a.m. when he was caught hold of by persons. In this manner, Gani Mian takes plea that he was caught under mistake. His this plea is not available to him because witnesses were continuously chasing him and caught him. There is no fact that he was actually done some work any where any from that place had returning. There was no reason why the return journey will be at 4 a.m. in the morning. Manzoor Mian had taken plea that he had gone to do Sohni and was returning when he was caught. His this plea also is not tenable at all because villagers continuously chased him and caught him.

7. Miss Kamlesh Jain, learned Counsel for the appellants submitted that the evidence regarding arrest of the appellants soon after chase is not trustworthy and their extra-judicial confessional statement before the Mukhia was not admissible. It was further submitted that the evidence that the appellants were arrested by the villagers is not corroborated.

8. Mr. Lala Kailash Bihari, learned Counsel for the State has relied on Nishi Kant Jha Vs. The State of Bihar, , and submitted that the confessional statement before Mukhia was admissible and not hit by Sections (3) and 24 of the Indian Evidence Act. In the said case, it was held that inculpatory portion can be accepted if the exculpatory portion is found to be inherently improbable. Acceptance of inculpatory portion and conviction based thereon was valid. No

question before the Supreme Court was raised whether extra-judicial confessional statement before Mukhia was admissible or not admissible.

9. In the instant case, the trial Court has held even extra-judicial confession was not taken into consideration, the appellants were arrested by the villagers shortly after committing the dacoity. The evidence appears to be absolutely convincing and there is no reason to take a different view.

10. I agree with the trial Court that the evidence against the appellants was sufficient even if extra-judicial confession is ignored. The appellants have been sentenced ten years each. They have remained in custody for about five years. The occurrence is of the year 1984. The sentence imposed on the appellants, in the facts and circumstances of the case, is reduced to the period already undergone. The appellants were granted bail by this Court, they are discharged from the liability of bail-bond.

11. The appeal is dismissed with above modification in sentence.