
(2001) 04 PAT CK 0076

In the Patna High Court

Case No : Criminal Appeal (DB) No. 591 of 1994

Garib Sahni @ Amir Sahni

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 30-04-2001

Acts Referred:

Penal Code, 1860 (IPC) — Section 396

Citation : (2001) 3 PLJR 350

Hon'ble Judges : R.N. Prasad, J;A.K. Sinha, J

Bench : Division Bench

Advocate : A.K. Choudhary and D. K. Srivastava, for the Appellant; Lala Kailash Bihari Prasad, for the Respondent

Final Decision : Dismissed

Judgement

1. The sole Appellant Garib Sahni @ Amir Sahni has preferred this appeal which is directed against the judgment and order of conviction and sentence dated 30.9.1994 passed by 2nd Additional Sessions Judge Khagaria in Sessions Trial No. 50 of 1990, whereby and whereunder, he convicted the Appellant u/s 396 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for life.

2. The prosecution case, as per the F.I.R. is that on 13.11.1988 at 6.30 P.M. the informant, namely, Pawan Kumar Chamaria was sitting in his shop along with his brother Bishnu Kumar Chamaria and servant Vijay Kumar when five miscreants entered into the shop and one miscreant remained outside the shop situated in Mahalla Lohapatti. It is alleged that all the miscreants were armed with pistols and one of them pointed pistol upon Vijay Kumar and asked him to keep quiet. They also pointed pistol at the informant and his brother asking them to keep quiet. Thereafter, the miscreants looted a sum of Rs. 1200-1400 from the cash box which was the sale proceed of the shop of that day. The miscreants also disconnected the telephone line and after committing the crime, they took to their heels. Further case of the prosecution is that the informant, his brother and

servant raised alarm and tried to catch hold of the dacoits and succeeded in apprehending three of them but two of them managed to escape. One of the dacoits was caught by the informant's brother Bishnu Kumar Chamaria (deceased) who shot at him with his pistol causing fire arm injury on his abdomen and thereafter he fled away. The Appellant was caught by the informant himself. The informant noticed that some money scattered on road and some money was taken away by the miscreants. The culprits were identified in the light of generator burning in the shop of the informant. The informant's brother Bishnu Kumar Chamaria was taken to hospital but he succumbed to the injury. The police arrived at the place of occurrence within few minutes and the Appellant was handed over to the police along with three cartridges which were recovered from his possession. The informant gave his fardbeyan at 7.00 P.M. on the basis of which a case u/s 396 of the Indian Penal Code was registered against the Appellant and others.

3. After completing the investigation the police submitted chargesheet against four accused persons, including the Appellant and the case was committed to the court of sessions for trial. The Appellant and accused Dewan Sahni, Naveen Paswan and Jai Jai Ram Mahto were put on trial and the charge u/s 396 of the I.P.C. was framed against all the four accused to which they pleaded not guilty and claimed to be tried. The defence was that all the accused persons were falsely implicated in this case. The learned trial court, however, acquitted accused Dewan Sahni, Naveen Paswan and Jai Jai Ram Mahto.

4. In order to prove the charge, the prosecution examined altogether nine witnesses, namely Gauri Ram Chamaria (P.W. 1), Birendra Kumar Gupta (P.W. 2), Pawan Kumar Chamaria (P.W. 3) informant, Ashok Kumar Sharaf (P.W. 4), Mohan Lai Gupta (P.W. 5), Vijay Kumar Laheri (P.W. 6) on the point of alleged occurrence out of whom P.W. 2 has been declared hostile by the prosecution. Dr. Amirul Hoda is P.W. 7 who conducted the postmortem examination on the dead body of the deceased and P.W. 8 Moti Pd. Yadav is a witness of formal nature who proved the formal F.I.R. (Ext. 4). P.W. 9 Arun Kumar Tiwary is the I.O. of the case.

5. The most important witness in this case is P.W. 3 Pawan Kumar Chamaria who is the informant of the case and he has deposed that on 13.11.88 at 6.30 P.M. while he was in his shop along with his brother Bishnu Kumar Chamaria and servant Vijay Kumar, five persons entered in the shop and one of them remained outside the shop. He further deposed that all the five accused were armed with pistol and they asked the servant Vijay Kumar to sit in a corner and by pointing pistol at him and his brother they took away about Rs. 1200-1400 from the cash box and fled, away from the shop. He further deposed that he raised alarm and tried to catch hold of the miscreants and three of them were actually caught by them. His brother Bishnu Kumar Chamaria had caught one of dacoits who fired at him and Bishnu fell down on road and became unconscious. The dacoit who had shot at his brother fled away. He further deposed that he had also caught one

dacoit whereas the remaining dacoits fled away in the north. This witness has disclosed the name of the Appellant who was caught by him and has also identified him in the dock. He further deposed that Bishnu died of the fire arm injury caused on his abdomen on way to the hospital. P.W. 3 has then stated that many persons had assembled at the place of occurrence and the police also arrived there and had searched the person of the Appellant and had recovered three cartridges from his possession. This witness has stated that his fardbeyan was recorded by the police after 15 to 20 minutes of the occurrence.

6. P.W. 1 Gauri Ram Chamaria who is also an eye witness to the occurrence has corroborated the statement of the informant. P.W. 5 Mohan Lai Gupta is another eye witness to the occurrence and both of them, (P.W. 1 and 5) have identified the Appellant in the dock and stated that he was caught at the spot by the informant. They also testified to the effect that on search three cartridges were recovered from the possession of the Appellant by the police. P.W. 5 is a witness on the seizure list and has proved seizure list (Ext. 2).

7. P.W. 4 Ashok Kumar Sharaf has supported the occurrence but he is conspicuously silent on the point of identification of the Appellant. Similarly, P.W. 6 Vijay Kumar has supported the entire occurrence but he also remained silent on the point of identification of the Appellant and the other accused. P.W. 2 Birendra Kumar has turned hostile and has not supported the case of the prosecution.

8. The evidence of P.Ws. 1, 3 and 5 who are the witnesses on the point of occurrence clearly go to show that the Appellant was one amongst the miscreants who was caught at the place of occurrence by the informant and the police arrived at the P.O. after 15 to 20 minutes and in presence of the witnesses and the crowd who have assembled there, the police searched the Appellant and recovered three cartridges from the possession of the Appellant. Their evidence further go to show that the fardbeyan was recorded without any delay and the F.I.R. was also lodged at 7.00 P.M. i.e. within an hour of the alleged occurrence. The three eye witnesses referred to above were cross-examined at length but the defence failed to elicit any such thing which may render their version unworthy of placing credence to, rather the evidence go to show that they remained unshaken on all material points.

9. The evidence of the eye witnesses has further been corroborated by the medical evidence of P.W. 7 Dr. Amirul Hoda who conducted postmortem examination on the dead body of the deceased on 14.11.88 at 7.20 A.M. at Sadar Hospital, Khagaria P.W. 7 found fire arm injuries which were wound of entry and wound of exit and the death in his opinion was caused due to haemorrhage and shock as a result of injury No. 1 found by him. P.W. 7 has proved the postmortem report (Ext. 3). Therefore, the medical evidence also corroborates the ocular version of the eye witnesses, namely, P.Ws. 1, 3 and 5. The evidence of other witnesses (P.Ws. 4 and 6) at least proves the alleged occurrence though they are silent on the point of identification.

10. P.W. 9 is, I.O. of the case and he has also deposed that he got information that a dacoity has been committed. So he went to the P.O. and met S.I. Panna Kumar Singh who had recorded the statement of Pawan Kumar Chamaria. He has proved the fardbeyan (Ext. 5) as also the formal F.I.R. (Ext. 4) which was lodged on the basis of the fardbeyan. He has stated that he visited the place of occurrence and found that the telephone connection had been cut and the cash box was open. He also seized three cartridges and has proved the seizure list (Ext. 2) which is in the pen of S.I. Panna Kumar Singh. It appears that the I.O. had handed over the investigation of the case to Ashok Kumar Das on 1.1.89. In cross-examination the I.O. has maintained to say that one live cartridge of 303 and two cartridges of "Bharua" were recovered from the possession of Appellant. The defence has tried to draw the attention of the I.O. in respect of certain contradictions elicited in the evidence of the witnesses but those contradictions are not very material so as to disbelieve the evidence of eye witnesses who have remained unshaken on all material points.

11. On careful examination of the evidence and facts and circumstances of the case we find that the prosecution has proved the charge against the Appellant beyond all reasonable doubts and the trial court was justified in convicting the Appellant. Accordingly, the conviction of the Appellant is affirmed.

12. On the point of sentence the learned Counsel for the Appellant submits that the Appellant is a poor labourer, and he has remained in jail custody for about twelve years and five months and his entire family has been ruined. It has therefore been prayed that the sentence awarded to the Appellant may be reduced to the period already undergone by him. The learned Counsel has placed reliance in the case of Dukhan Ram and Anr. v. The State of Bihar reported in 1987 P.L.J.R. (NOC) 9 in support of his contention.

13. Having regard to the facts and circumstances of the case and the period undergone by the Appellant in jail custody, we are of the view that it will meet the ends of justice if the sentence awarded to the Appellant is reduced to the period already undergone by him. Accordingly the sentence is modified to the period undergone by the Appellant.

14. In the result, therefore, we find no merit in this appeal. Accordingly, it is dismissed with modification in sentence as indicated above. The Appellant who is in custody is directed to be released from the custody forthwith if not wanted in any other case.