
(2002) 02 PAT CK 0042

In the Patna High Court

Case No : Criminal Appeal No. 397 of 1990

Hardeo Mahton @ Hirdey Mahto

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 07-02-2002

Acts Referred:

Penal Code, 1860 (IPC) — Section 395, 396

Citation : (2002) 2 PLJR 365

Hon'ble Judges : B.N.P. Singh, J

Bench : Single Bench

Advocate : Jagdish Prasad Bhagat, for the Appellant; B.P. Gupta, for the Respondent

Final Decision : Dismissed

Judgement

B.N.P. Singh, J.—The Appellant alongwith Sheoji Mahto and Jaggu Mahto were put on trial for an offence punishable u/s 396 of the Indian Penal Code. However, as Jaggu Mahto died during the pendency of trial, the trial abated as against him. However, the trial commenced and concluded against Sheoji Mahto and the Appellant.

2. Shorn of details, the prosecution version as transpiring in fardbeyan of Roshan Mahto was that in the intervening night of 13th February, 1988, at about 11.45 P.M., some unidentified miscreants having trespassed in the dwelling house of said Roshan Mahto, assaulted house inmates, relieved them of their belongings including cash, damaged house belongings and decamped with the booties. It was alleged that while retiring with booties, they also exploded bomb causing injuries to Sheo Raj Mahto and also Sonfi Mahto pursuant to which latter succumbed to the injury. After the police was set in motion with these accusation, investigation commenced, in course of which the Police Officer recorded statement of witnesses visited place of occurrence and eventually laid charge sheet before the Court. The Appellant alongwith others, on being committed to the Court of Sessions was put on trial.

3. In the eventual trial, the prosecution examined altogether eight witnesses and those examined by the prosecution include Chandeshwar Mahto P.W. 1, Muniya Devi P.W. 2, Roshan Mahto P.W. 3 and Mahangi Devi P.W. 4 who were house inmates who suffered wrath of the unidentified miscreants who committed dacoity in the dwelling house. Nagendra Mahto P.W. 5 and Shivraj Mahto P.W. 6, it seems, are neighbours of the victim who too testified commission of dacoity in the house of Roshan Mahto. Shiv Chandra Prasad Singh P.W. 8 was a formal witness who brought first information report and also fardbeyan on the record and there was nothing material in his evidence to merit consideration. Jai Shankar Chaudhary P.W. 7 happens to be a Judicial Magistrate before whom test identification parade was conducted in the jail premises. The defense too examined one witness, namely, Ram Swarath Mahto.

4. Now advertng to the evidences placed on the record, one would find Chandeshwar Mahto P.W. 1 stating about commission of dacoity in the dwelling house in the night of incident, when miscreants assaulted house inmates, relieved them of wrist watch, broke open boxes in the courtyard and also exploded bomb, on being chased by the villagers. He stated to have noticed Sonfi Mahto and Sheo Raj Mahto, with injuries on their persons. He claimed to have noticed faces of the miscreants in the flash of torch held by them. He stated to have identified the miscreants Hardeo Mahto and Jaggu Mahto in the test identification parade in jail premises.

5. The factum of dacoity in the night of the incident was also narated by Muniya Devi, P.W. 2, Roshan Mahto P.W. 3, Mahangi Devi P.W. 4, Nagendra Mahto P.W. 5 and Shiv Raj Mahto P.W. 6 when unidentified miscreants allegedly assaulted the house inmates, relieved them of ornaments, cash and also wrist watch. They stated about Sonfi Mahto having died due to bomb injury allegedly lobbed by the miscreants and also Sheo Raj Mahto having suffered injury on his person. Jai Shankar Chaudhary P.W. 7 who happens to be Judicial Magistrate stated about identification of the Appellant and Jaggu Mahto in test identification parade by Chandeshwar Mahto P.W. 1. This is all the evidence that has been adduced on behalf of the State and also the defence. Ram Swarath Mahto D.W. 1 stated about some sort of animosity between Chandeshwar Mahto and the Appellant, as in a matrimonial matter, father of the Appellant was a Panch. The trial Court, on appreciation of evidence placed on the record, while negating contentions raised at bar on behalf of the Appellant, while acquitting Sheoji Mahto of the charges brought against him, finding Appellant not guilty u/s 396 of the Indian Penal Code rendered verdict of guilt u/s 395 of the Indian Penal Code and sentenced him to suffer rigorous imprisonment for ten years on that count.

6. The finding recorded by the trial Court was sought to be assailed by the learned Counsel appearing for the Appellant on premises that it would transpire from the testimony of Chandeshwar Mahto who claims identification of the Appellant during test identification parade, that during commission of dacoity his wife stated that one of the dacoits hails from village Tilgha, where he was

married and on these premises it is sought to be urged that the Appellant was known to him, preceding date of occurrence and, hence, his false implication in the backdrop of the evidence of D.W. 1 cannot be ruled out. Contentions were raised that taking the prosecution evidences placed on the record, to be true on its face value, as this was a case of solitary identification of the Appellant, it was hazardous to place reliance on the sole testimony of P.W. 1 and the next limb of argument canvassed at bar on behalf of the Appellant was that identification of the Appellant by P.W. 1 is not free from blemishes, as possibility of the Appellant having been shown to the witnesses, preceding, holding of test identification cannot be ruled out.

7. In view of the evidences of P. Ws. 1, 2, 3 and 4, who are house inmates and also the evidences of P. Ws. 5 and 6, who are neighbours, the factum of dacoity, possibly cannot be challenged. This fact cannot be lost sight of that the fardbeyan was lodged with the police after an hour of the occurrence with all promptitude that was expected from the aggrieved person. The evidences placed on the record do suggest that one Sonfi Mahto lost his life while Sheo Raj Mahto also sustained injury on his person and Appellant was not found guilty u/s 396 of the Indian Penal Code, possibly there being no evidence that Sonfi died of injury in the same transaction at the hands of the miscreants. The evidences of Sheo Raj Mahto P.W. 6 and Nagendra Mahto P.W. 5 do suggest that while the miscreants were being chased during the retreat with booty, they exploded a bomb, pursuant to which Sonfi Mahto was killed and Sheo Raj Mahto sustained injury on his person. The trial Court noticed that neither postmortem report was placed on the record nor the doctor was examined and hence the charges u/s 396 of the Indian Penal Code was negated.

8. The evidences bear testimony that the Appellant was remanded in this case on 17th March, 1988 and it was only after four days that he was put on test identification parade on 21st March, 1988, when the Appellant was identified by Chandeshwar Mahto P.W. 1. True it is that human memory is not infallible (sic-Mnfal-lible ?), but in the circumstances of the case, the prosecution cannot be found to be guilty of holding test identification parade belatedly. The defense of the Appellant about his false implication due to some matrimonial matter was also found to be untrue by the trial Court for the reason that there was no probability of the father of the Appellant to be a Panch in a matter of another village. Finding the evidence of P.W. 1 true, and also that no infirmity had been brought to the notice of the Court, about the proceeding of the test identification parade, I find that the finding recorded by the trial Court did not suffer from legal infirmity so far conviction of the Appellant u/s 395 of the Indian Penal Code was concerned. It is brought to my notice by learned Counsel for the Appellant that he had been in custody for two and half years.

9. Be that as it may, while upholding the conviction of the Appellant u/s 395 of the Indian Penal Code and regard being had to the fact that the prosecution was launched against the Appellant in the year, 1988, the sentence imposed by the

trial Court is reduced to three years and with this modification in sentence, the appeal is dismissed.