
(2011) 12 PAT CK 0091

In the Patna High Court

Case No : Criminal Appeal (SJ) No. 269 of 1998

Jai Nath Ahir @ Jai Nath Yadav

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 08-12-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 395, 397

Citation : (2011) 12 PAT CK 0091

Hon'ble Judges : Gopal Prasad, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Gopal Prasad, J.—Heard learned counsel for the appellant and the State.

2. The appellant has been convicted u/s 395 of the Penal Code and sentenced to undergo rigorous imprisonment for seven years.

3. The prosecution case, as alleged, is that dacoity was committed on 26.12.1978 at 12 in the mid night and two persons", namely, Dukhit Chamar and newpew of Shivbali Pandey, identified amongst the dacoits.

4. On the fardbeyan, the first information report lodged and after the investigation the charge sheet submitted. However, during the investigation some of the persons were apprehended and put on test identification parade. The police after investigation submitted charge sheet, cognizance taken and the case committed to the Court of sessions.

5. Charge framed against the appellant for offence under Sections 395 and 397 of the Penal Code. During the trial three witnesses were examined. P.W. 1 is the informant, P.W. 2 is Advocate Clerk, who has formally proved Exhibit 2, the forma, first information report, and P.W. 3 has only come to say that the daroga, Raj Ballabh Singh, has died.

6. The trial Court, taking into consideration the evidence of P.W. 1, who

supported the prosecution case about the dacoity and has claimed to have identified appellant, Jai Nath Ahir, in test identification parade conducted during the investigation and convicted the appellant for offence u/s 395 of the Penal Code, but, acquitted the appellant for offence u/s 397 of the Penal Code.

7. The defence of the accused person as apparent from the trend of cross examination and suggestion that appellant has falsely been implicated due to prior enmity, there was no source of identification and the appellant was co-villager.

8. The learned counsel for the appellant, however, contends that the appellant was a co-villager of the informant and informant though claimed to have identified two persons as mentioned in the fardbeyan, this appellant has not been named in the fardbeyan and, hence, this identification of the appellant by P.W. 1 has no consequence. He must have taken the name of this appellant in the first information report, itself. It has, further, been contended that though the informant identified the appellant in the Court, but, the Magistrate, who conducted the test identification parade and test identification chart has not been examined to support the test identification parade. It has, further, been contended that this is a case of single identification and neither any corroboration has been established nor it has come in evidence that when the appellant was identified what act of commission or omission was being done by him and, hence, the identification by the informant is neither reliable nor worthy of confidence to record conviction.

9. The learned counsel for the State, however, opposed and supported the order of conviction and sentenced.

10. However, taking into consideration the submission made by appellant the conviction has been recoded on the basis of single identification by the informant either the investigating officer nor the Magistrate, who conducted the test identification parade has been examined or the test identification chart has been proved and the only evidence against the appellant is the evidence of P.W. 1 that he participated in test identification parade in jail in which he identified two persons and out of two persons he identified the appellant in Court, but, refused to identified the others. However, from perusal of the evidence of P.W. 1, who though has supported the prosecution case regarding the dacoity having been committed in his house and in the fardbeyan he has claimed to have identified two persons Dukhit Chamar and nephew of Shivbali Pandey, but, he has not named this appellant. However, the appellant in his evidence in paragraph 6 of his cross examination admitted that this appellant is a co-villager and is son of Dina Nath, however, when this appellant was known to the informant since before and, hence, not naming him in the first information report and the identification of the appellant in such fact and circumstance test identification parade loses it's significance of identification when the appellant was known to the informant. However, the Magistrate, who conducted the test identification parade has not been examined nor the test identification chart has been brought

on record or proved the corroboration and, hence, there is no corroboration to the identification. However, when the appellant was known to informant, since before and has not been named in first information report the identification of the appellant in test identification parade loses its significance and has got no value.

11. Hence, under the facts and circumstance, I find and hold that the identification of the appellant does not inspire confidence and the evidence regarding the identification neither reasonable nor worthy of confidence to be relied.

12. I find and hold that the prosecution has not been able to prove the charges for offence u/s 395 of the Penal Code against the appellant and, hence, the order of conviction, recorded by the lower Court, is hereby set aside and the appeal is allowed.