
(2007) 04 JH CK 0088
In the Jharkhand High Court

Kallu Mian and Others

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 03-04-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 395, 412

Citation : (2007) 4 JCR 529

Hon'ble Judges : Dhananjay Prasad Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.P. Singh, J.—Since all the appeals, arise out of common judgment, are herd together and are being disposed of by this common judgment.

2. All these appeals are directed against the judgment of conviction and order of sentence dated 16.5.2002 and 17.5.2002 passed by 3rd Additional District and Sessions Judge, Dhanbad in Sessions trial No. 111/92/468/93, whereby and whereunder the learned Additional Sessions Judge held all the appellants guilty under Sections 395 IPC and sentenced them to undergo RI for five years and a fine of Rs. 1000/- each and in default of payment of fine to undergo SI for six months.

3. The brief facts leading to these appeal are that in the evening of 24.11.1990 the informant Ramesh Singh was inside his house when he heard the sound of knocking on the door. It is further stated that somebody was asking to open the door, on which he opened the door to receive unwanted guests. According to him, 8-10 dacoits, armed variously, entered into the house and forced him to stand in a corner on the point of revolver. It is further stated that four of the dacoits went inside the house and started assaulting his younger brothers asking for money, ornaments as well as key of the Godrej almirah. As further stated, thereafter the dacoits took away Rs. 60,000/-in cash, 30 bhars of golden ornaments, one licensee rifle bearing No. 87-AB-2682/IOF and some other

valuables. He was further robbed his money bag containing Rs. 1000/-. The dacoits thereafter went out of the house and closed the door. However, during this period one of the dacoits, who was further searching almirah, remained inside. The informant thereafter closed the door from inside and blocked the way of the dacoit. The dacoit threatened him with country made pistol and further pressed the trigger. However, the pistol could not fire and in the meantime all the house inmates caught the dacoit. The informant further raised alarm, on which neighbours arrived, in whose presence the dacoit disclosed his name as Aslam @ Goitha, son of Nizam Mian of Shamsheer Nagar, P.S. Jhalida, district Dhanbad. The informant further mentions that the arrested dacoit disclosed the names of 7 other dacoits including the appellants. In the meantime police arrived, recorded the statement of the informant, PW 1, on the basis of which Dhanbad Sadar P.S. Case No. 218/90 was registered u/s 395 IPC against the named accused persons.

4. The police started investigation and finally submitted charge sheet bearing No. 1391 dated 25.3.91 after arresting five dacoits and showing three absconders. The accused persons in custody were committed to the court of sessions where they were put on trial after framing of charge on 25.7.95. During trial one Md. Haidar confessed his guilt and was sentenced to serve RI for seven years on 25.7.98. Another charged accused Md. Wahid jumped bail and absconded. Remaining five accused persons, Kallu Mian, Ayub Ansari, Md. Salim, Abdul Matin and Md. Jainul charged u/s 395 IPC, pleaded not guilty and claimed false prosecution. Appellants Ayub, Abdul and Jainul were charged u/s 412 IPC on 2.2.2000 for possessing the looted rifle, later on recovered by the police, vide Dhanbad Sadar P.S. Case No. 173/93 dated 12.5.93, on confession of Wahid the looted rifle was recovered from the possession of Matin. The learned trial court, by order dated 16.5.2002, acquitted appellants Matin, Jainul and Ayub from charge u/s 412 IPC but found and held all the appellants guilty u/s 395 IPC and sentenced them as aforesaid.

5. The present appeals have been preferred by the appellants separately on the ground that the learned trial court has committed a mistake by believing the belated statement of the witnesses. It is further submitted that the names of appellants were disclosed by co-accused Aslam @ Goitha, who is not facing trial. It is also asserted that the identification of the appellants is doubtful as the TIP held during investigation on 16.2.91 has not been proved by the prosecution. According to the counsel for the appellants, in absence of TIP chart and evidence of judicial Magistrate conducting the TIP, identification of appellants during trial after a lapse of 5-6 years does not inspire confidence. It is further asserted that when the trial court acquitted the appellants from the charge u/s 412 IPC, the basis of conviction u/s 395 IPC is missing. The non-examination of IO was also highlighted. Accordingly it is submitted that the conviction of the appellant deserves to be set aside.

6. Learned APP for the prosecution submits that the conviction of the appellants is fit to be maintained as the appellants were identified by witnesses during trial

to have participated in the actual offence u/s 395 IPC.

7. I have gone through the materials on record. The incident took place in December, 1990 when one of the dacoits Aslam @ Goitha said to have been arrested by the informant grid on his disclosure names of other seven dacoits were given in the fard beyan. Out of that police could arrest five persons during investigation to submit first charge sheet on 25.3.91 showing three persons absconders. In this charge sheet name of appellant Kallu along with Salim and Munna was disclosed. This charge sheet does not mention the name of Matin, Jainul and Ayub. However, supplementary charge sheet was submitted on 17.7.93 where name of three appellants Ayub, Abdul and Jainul with along with wahid, already sown absconder in the earlier charge sheet, was submitted. Said Wahid, as already discussed, has now absconded. The supplementary charge sheet was submitted after absconding Wahid was arrested by the police in connection with Sadar Katras P.S. Case No. 173/93 under various sections of Arms Act and on his disclosure the rifle, looted from the house of the informant, was recovered from appellants Yaub, Jainul and Matin.

8. The prosecution has examined altogether eight witnesses, out of which PW 1 is the informant. PWs 2 and 3 are younger brothers of PW 1. PW 8 is elder brother of PW 1. Remaining witnesses PWs 4, 5, 6 and 7 are hearsay witnesses of the occurrence. However, they have specifically supported the prosecution case regarding the arrest of one of the dacoits Aslam @ Goithwa, who has disclosed the name of others accompanying him. They have also asserted that a pistol was recovered from the arrested dacoit, which was seized by the police in their presence vide Ext. 2 series. As such, the factum of dacoity committed in the house of the informant in the evening of 24.11.90 is proved beyond doubts. The fact further remains proved that one dacoit Aslam @ Goitha was arrested by the informant along with one country made pistol at that time and he was handed over to the police. PW 8 was not present when incident took place but he has received back the looted rifle from the police.

9. PWs 1, 2 and 3 are eye witnesses of the occurrence, who claimed to have identified the dacoits. According to PW 1, TIP was held after which he identified accused Haidar, Kallu and Munna in the court. He further asserted that appellants Ayub, Matin and Jainul were arrested along with the looted rifle. He named appellant Kallu carrying Katta in his hand. However, the said TIP chart has not been produced by the prosecution before the trial court. PW 2 asserted that he identified accused Haidar, Munna, Wahid and Kallu. This witness has further admitted vide para 28 that he identified two of the accused without naming them. PW 3 has not gone to identify the appellants as per his admission, vide para 26 of his cross examination.

10. There are only two prosecution witnesses, who have asserted that they identified the appellants. The photocopy of the TIP chart has been produced by the learned Counsel for appellant Md. Salim asserting that he was not identified by the witnesses giving the parentage of the appellant.

11. In the present case IO has not been examined neither the Judicial Magistrate, who conducted the TIP, has been produced before the trial court. However, the trial court having relied upon the oral evidence of these two witnesses, PWs 1 and 2, found and held the appellants guilty u/s 395 IPC. The fact therefore remains that out of these appellants, according to PWs 1 and 2, only Kallu and Salim have been identified by them on 16.2.91. It is admitted fact on record that appellants Ayub, Matin and Jainul, who were later on arrested in connection with Katras P.S. Case No. 173/93 were not put on TIP. Therefore, their identity at the time of trial becomes doubtful. Apart from this, identity of appellants Salim and Kallu, though asserted by PWs 1 and 2, has not been supported by the prosecution by examining the Judicial Magistrate, who conducted the TIP on 16.2.91. In such cases where dacoity was being committed, the identity of the assailants become doubtful particularly when the informant being threatened with pistol on his chest. The identification of the appellants therefore requires more support, which was available on record by getting TIP chart proved through the Judicial Magistrate, who conducted the TIP as per law. This fact is missing. The reliance placed upon such identification by the learned trial court is, therefore, misplaced and misconceived because for the first time these appellants were identified by PWs 1 and 2 in the year December, 1995 and October, 1996, after 5 to 6 years of the occurrence.

12. I further went through the statements of the appellants recorded by the trial court u/s 313 Cr.P.C. in which it has not been mentioned that they were identified by the witnesses during trial to have participated in the dacoity rather a single question regarding recovery of looted rifle was put up to all these appellants, which is irrelevant for the purpose of appellants Kallu and Salim. Appellant Salim was further not named by PW 2. The reasons given by the learned trial court, vide para 10 that even in absence of the production of TIP chart identification of appellants during trial proves their complicity in the dacoity, is misconceived and not legal. The recovery of looted articles from the possession of one of the appellants after merely 30 months cannot be the basis of their presumption that they have participated in the offence u/s 395 IPC particularly when the learned trial court acquitted these three appellants from charge u/s 412 IPC for lacking of evidence.

13. Having considered the facts and circumstances, discussed above, I find and hold that the conviction of the appellants cannot be sustained.

14. In the result, these appeals are found having merit in them and deserve to be allowed. Accordingly, all these appeals are hereby allowed and judgment of conviction and order of sentence dated 16.5.2002 and 17.5.2002 are hereby set aside. The appellants being on bail, are released from the liability of their bail bonds.