
(2019) 11 JH CK 0039

In the Jharkhand High Court

Case No : Criminal Appeal (S.J.) No.159, 315, 335 Of 2006, 779 Of 2007

Kishori Pandey And Ors

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision : 08-11-2019

Acts Referred:

Indian Penal Code, 1860 — Section 395, 412

Citation : (2019) 11 JH CK 0039

Hon'ble Judges : Rajesh Kumar, J

Bench : Single Bench

Advocate : Avishek Prasad, Amarendra Kumar, Mahadeo Thakur, Sajid Yunus Warsi, R.P. Singh

Final Decision : Allowed

Judgement

1. Heard the parties.

2. These criminal appeals are directed against the judgment of conviction dated 17.01.2006 and order of sentence dated 19.01.2006 passed by Sri Rajesh Kumar Pandey, Addl. Sessions Judge, Fast Track Court-VI, Hazaribag, in Sessions Trial No.246 of 2003 whereby and whereunder the appellants have been convicted for the offences under Sections 395/412 of the Indian Penal Code and have been sentenced to undergo rigorous imprisonment for seven years for the offences under Section 395 of the Indian Penal Code along with fine of Rs.2,000/- each and have been further sentenced to undergo simple imprisonment for five years for the offence under Section 412 of the Indian Penal Code along with a fine of Rs. 1,000/ each, except appellant-Ram Kripal Pandey. Both the sentences were directed to run concurrently.

3. The prosecution story, as unfolded in the first information report dated 19.12.2002 is that in the intervening night of 18/19 of December, 2002, when the informant namely Fagu Thakur was sleeping at his Varandah, he heard sound of footsteps and thereafter two persons namely, Tripurari Pandey and Kishori

Pandey along with 8 to 10 unknown miscreants entered and captured him. The informant has been beaten badly and he has become unconscious. The miscreants have looted some ornaments and Rs.60,000/- from the house. Thereafter, they locked the house from outside which has been subsequently opened by P.W.2-Saryu Thakur.

4. Based on the aforesaid allegation, Chouparan P.S. Case No.162 of 2002 was instituted under Sections 395/412 of the Indian Penal Code, in which after investigation, charge sheet has been submitted against five accused persons including appellants and after cognizance was taken, the case was committed to the Court of Sessions. Charge has been framed under Sections 395/412 of the Indian Penal Code to which the appellants pleaded not guilty and claimed to be tried.

5. On conclusion of the trial, all the accused persons have been convicted under Section 395 of the Indian Penal Code whereas except Ram Kripal Pandey, all the accused persons have also been convicted under Section 412 of the Indian Penal Code.

6. Issues which arises before this Court are (i) Whether the prosecution has been able to prove the commission of dacoity or not? (ii) Whether sufficient evidence has been brought on record connecting the accused with the crime?

7. In course of the trial, twelve witnesses have been examined on behalf of the prosecution. Two exhibits have also been marked on behalf of the prosecution.

8. P.W. 1, Md. Haider Ali (Block Development Officer) has conducted TIP of the articles on 27.03.2003. In the TIP, one Santosh Tape Recorder has been identified by P.Ws.3, 4, 6 & 7. In the said TIP, several articles including ornaments have been put forth for identification but only Santosh Tape Recorder has been identified. The said tape recorder is general and easily available in the market. Further, no evidence has been produced regarding ownership of the tape recorder by the informant and his family members. Only on the basis of so-called confessional statement made before the I.O., articles has been declared as looted articles. The said confession before the police has no evidentiary value and same has not been produced before the court.

9. P.W.8, Sri Diwakar Pandey, Judicial Magistrate, has conducted TIP on 24.03.2003 in which all the accused persons have been identified by P.Ws.3, 4, 5, 6 and 10, who are claimed to be the eye witnesses of the occurrence.

10. P.W.3 Sarita Kumari , P.W.4 Samundri Devi and P.W.6 Fagu Thakur have stated in their cross-examination that all the accused persons are either neighbours or from nearby of the village and they were on visiting terms. They were usually coming to the house of the informant and as such, they were very known persons to the informant and his family members. Only two persons, namely, Tripurari Pandey and Kishori Pandey have been named in the FIR and other appellants namely, Ram Kripal Pandey, Santosh Pandey and Abdul Gaffar

Ansari have not been named in the FIR although they were known to the informant and his family members. Conducting TIP for known persons are strange procedure adopted by the I.O.

11. P.W.3-Sarita Kumari is grand daughter of the informant and she has supported the FIR but has disputed the fardbeyan stating that she has also signed but her sign is missing in the fardbeyan.

12. P.W.4- Samundri Devi, is the wife of the informant. She has also supported the FIR but in her cross examination, she has admitted that all the accused were known to her and further suggestion has been put that there was money dispute with regard to erection of brick kiln on the land of Kishori Pandey, one of the appellant and for that purpose, warning has been given for paying Rs.2,00,000/-. P.W.5-Sita Devi is the daughter-in-law of the informant, has supported the FIR.

13. P.W.6 Fagu Thakur is the informant. He has supported the FIR. But in his cross-examination at para-16, he has admitted that the appellants/accused are known to him. He has also stated that he has been badly beaten by the miscreants but no injury report has been brought on record.

14. P.W.7 Amrit Thakur is the son of the informant. He has stated that when he returned to his house from Tilaiya on 19.12.2002, then he has been informed regarding the incident and by that time, the police has come and FIR has been lodged. In cross- examination, he has testified that the FIR has not been lodged in his presence rather he has written the incident as stated by the family members and has handed over to the police subsequently. He has not deposed that he has given Rs.60,000/- to her mother just before the incident. P.W. 4 has stated in her testimony that Rs.60,000/- has been given by his son and was kept in a box which has been broken and the money has been taken by the miscreants. But the factum of giving money to P.W.4 by P.W.7 has not been testified by P.W.7. P.W.9-Shiv Nath Prasad Kasera is the seizure list witness, who has identified his signature on the seizure list. P.W.10 Kalawati Devi is the younger daughter-in-law of the informant, who has supported the FIR. P.W.12 Bindeswar Prasad Singh Chauhan is police personnel, who has proved the material evidence before the court below. In his testimony, he has admitted that articles were seized but it were directly produced from the Malkhana.

15. P.W.11 Ravi Kant Prasad (I.O.) has narrated the same as has been written in the FIR. He has testified that he has conducted the raid in the house of Santosh Pandey on 25.12.2002 where he has recovered some ornaments and Santosh Tape Recorder. Ornaments were recovered from the possession of Abdul Gaffar Ansari, Santosh Pandey and Kishori Prasad. The appellants have confessed that the articles recovered were looted articles.

16. The confession before the police has no evidentiary value. On the basis of the said confession, articles have been declared as looted articles. No owner has come forward, claiming articles and further so far present case is concerned, one of the articles i.e. Santosh Tape Recorder has been claimed by the informant's

family members but no evidence has been produced regarding ownership of the same. Further Santosh Tape Recorder is a general article easily available in the markets. The said article neither sealed nor marked by the I.O. and has been deposited in the Malkhana and from the Malkhana, said article has been produced before the court below by P.W.12. Ext.1 is the list of the materials produced before the court below and those materials are not relevant for the purpose of present appeals except Santosh Tape Recorder. Ext.2 is the TIP Chart.

17. Strangely, as stated by P.Ws.3, 4, 6 & 7 that the accused put on TIP were known to the prosecution witnesses rather they were on visiting terms and they usually use to visit the house of the informant. Krishna Pandey is the next door neighbour and there is money dispute between the parties concerning erection of brick kiln upon the land of Kishori Pandey. Other accused are from nearby village and well known to the informant and his family members.

18. Considering the entire evidence produced by the prosecution, this Court comes to the finding that the factum of dacoity stands not proved as no sufficient evidence has been produced by the prosecution. Existence of Rs.60,000/- has not been supported by the prosecution. So-called recovered article i.e. Santosh Tape Recorder, no evidence has been produced regarding ownership of the recovered article i.e. Santosh Tape Recorder. As per the prosecution witnesses, the appellants were known to them in spite of that, they have not been named in the FIR although sufficient time and light were available for identifying them and further they have not been identified during course of dacoity, then subsequent identification is doubtful. The dispute between the parties also suggests the reason for false implication.

19. In view of the above discussion, this Court finds that the prosecution has failed to prove the commission of dacoity and consequently, participation of the accused/appellants in the dacoity.

20. Resultantly, present appeals are allowed and the judgment of conviction dated 17.01.2006 and the order of sentence dated 19.01.2006 passed by Sri Rajesh Kumar Pandey, Addl. Sessions Judge, Fast Track Court-VI, Hazaribag, in Sessions Trial No.246 of 2003 is hereby, set aside.

21. Since the appellant, namely, Ram Kripal Pandey in Cr. Appeal (S.J.) No. 315 of 2006 is in custody, he is directed to be released from custody forthwith, if not wanted in any other case.

22. Since the appellants-Kishori Pandey, Santosh Pandey and Abdul Gaffar Ansari, in Cr. Appeal (S.J.) No. 159 of 2006, in Cr. Appeal (S.J.) No.335 of 2006 and in Cr. Appeal (S.J.) No.779 of 2007 respectively, are already on bail, they are discharged from the liability of the bail bond.