

(2016) 01 JH CK 0002

In the Jharkhand High Court

Case No : Cr. Appeal (DB) No. 1313 of 2006 in Sessions Trial No. 367 of 1995,
G.R. Case No. 752 of 1994, P.S. Case No. 298 of 1994

Lakhan Bhuiyan

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 21-01-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 395, 412

Citation : (2016) 3 ECrC 138 : (2016) 2 JBCJ 371 : (2016) 2 JLJR 292

Hon'ble Judges : D.N. Upadhyay;Ratnaker Bhengra, JJ.

Bench : Division Bench

Advocate : Laljee Sahay, Advocate, for the Appellant; Amaresh Kumar, A.P.P, for the Respondent

Final Decision : Dismissed

Judgement

1. This criminal appeal has been directed against the judgment of conviction and order of sentence dated 15.07.2006 and 17.07.2006, respectively, passed by the Learned Additional Sessions Judge, F.T.C. Koderma, in connection with Sessions Trial No. 367 of 1995, corresponding to G.R. Case No. 752 of 1994, arising out of Koderma P.S. Case No. 298 of 1994 whereby the appellant has been held guilty for the offences punishable under Sections 395 and 412 of the I.P.C and sentenced to undergo rigorous imprisonment for life under Section 395 of IPC and also to pay a fine of Rs. 5000/-, in default of payment of fine, further rigorous imprisonment for six months. He has further been sentenced to undergo rigorous imprisonment for ten years under section 412 IPC and a fine of Rs. 5000/- and in default of making payment of fine, further six months rigorous imprisonment. Both sentences so passed shall run concurrently.

2. The prosecution case, according to the Fardbeyan of Md. Shalauddin recorded on 02.12.1994 at about 12:15 hours at Koderma Ghati, in brief, is that the informant happens to be the driver of bus bearing registration No. BR.2P-9055. The aforesaid bus was looted by the dacoits at Koderma Ghati. The miscreants

have looted the passengers and fled away towards forest. The matter was brought to the notice of the police patrolling party who chased the miscreants and succeeded to apprehend the appellant and looted articles have been recovered. During investigation, names of other dacoits transpired and they were also brought on record. The police, after due investigation, submitted charge-sheet under Sections 395 and 412 of the I.P.C. against the appellant and other accused persons and they were put on trial.

3. In course of trial, the remaining accused, who had been charged, absconded as a result judgment was pronounced only against the appellant and he has been held guilty under Sections 395 and 412 of the I.P.C. and sentenced, as indicated above.

4. Learned counsel appearing for the appellant, without entering into the evidence available on record, has submitted that punishment awarded under Section 395 of I.P.C. is highly excessive. The prosecution witnesses have not supported the case wholeheartedly. The appellant has been languishing in jail since the date of judgment i.e. from 15th day of July, 2006. It is submitted that the appellant has suffered a lot by remaining in jail for about nine and half years after pronouncement of the judgment and he had also remained in custody during trial for about two years. It is prayed that leniency in the sentence passed by the convicting court may be considered.

5. Learned APP has opposed the arguments.

6. We have gone through the impugned judgment and perused the evidences available on record. We find that altogether four witnesses have been examined, but they have not supported the prosecution case wholeheartedly. Suchit Kumar-P.W.1, was the passenger in the bus and he has supported the occurrence. Md. Shaillauddin-P.W.2, is the informant and he has described the occurrence in his deposition and said that looted articles have been recovered from possession of the miscreants. Md. Akhtar-P.W.3, was Khalasi in the bus and he has also supported the prosecution case. Ghanshyam Prasad-P.W.4, happens to be the police inspector and he has supported the fact that the appellant was apprehended after chase and looted articles have been recovered from his possession.

7. If the period of custody of the appellant is taken into consideration, it will reveal that he was in jail custody during trial for about two years and after pronouncement of the judgment, he has been in custody for about nine and half years. It will also transpire from the records that rest of the accused persons are absconding.

Considering the facts and circumstances as well as the evidences available on record, we feel inclined to modify the sentence and accordingly, it is ordered that the appellant shall suffer ten years R.I. and shall pay a fine of Rs. 5000/-for the offence punishable under Section 395 of the I.P.C, in default of making payment of fine, further R.I. for six months. The modification in the sentence inflicted

under Section 395 of the I.P.C shall serve the purpose and therefore, we do not feel inclined to interfere with the sentence passed under Section 412 of the I.P.C.

8. It is directed that sentence so passed under Sections 395 and 412 of the I.P.C. shall run concurrently and the period already undergone shall be set up under Section 428 of the Cr. P.C.

9. The appeal stands dismissed with the aforesaid modification in sentence. The learned Convicting/Successor Court shall issue modified conviction warrant.

10. Let this order be communicated to the concerned Court for compliance.