

(2002) 11 OHC CK 0024

In the Orissa High Court

Case No : Jail Criminal Appeal No's. 51, 64 and 327 of 1996

Lalu alias Bhola alias Rama Sahu and etc.

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 13-11-2002

Acts Referred:

Penal Code, 1860 (IPC) — Section 395

Citation : (2003) CLT 95 (Suppl CrI) : (2003) CriLJ 1677 : (2003) OLR 95 (Suppl CrI) : (2002) OLR 767 Supp

Hon'ble Judges : P.K. Mohanty, J

Bench : Single Bench

Advocate : S.K. Bal, for the Appellant; Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Mohanty, J.—These three Jail Criminal Appeals arise out of a common judgment of the First. Additional Sessions Judge, Berhampur in S.C. No. 3/94 (S.C. No. 123/ 94 GDC) and common question of law and fact being involved in all the three appeals, on the prayer and with the consent of the learned counsel for the parties, these are taken up for hearing together and is being disposed of by this common judgment.

2. The prosecution case briefly stated is that one Nabakishore Choudhury, an A.S.I, of Police was staying in a rented house at Bijipur Sastri Nagar Billo Sahi. He was availing leave. On 2-8-1990 around 2.00 a.m. five to ten miscreants entered into his house and by showing knives, sword and Kati got him tied. They took away the golden ornaments of his wife and by breaking open the boxes and almirah of the informant, they took away the service revolver of the informant with 30 rounds of live cartridge and other valuable articles. FIR was lodged at Baidyanathpur Police Station and the case was registered and the police was investigating the case. On 12-1-1991 at about 10-30 p.m. when the police party was conducting routine patrol duty, they found a group of persons sitting on the open paddy field near Phulta Road. On suspicion, the police party raided the

place and those persons started running to escape. However, accused Abdul Quaddir who was found holding a plastic bag containing four numbers of live hand bombs and 0. 38 police revolver loaded with five rounds of cartridges leaving one chamber vacant, was apprehended. This revolver was allegedly stolen from the house of the informant, A.S.I, of police. Accused Sikandar Mullah was caught by another Police Officer and was found in possession of house breaking materials. The Officer-in-charge Sadar Police Station seized those hand bombs, revolver, cartridges and house breaking implements. The steel knife, country made pistol, monkey cap and the daggers were also seized. During interrogation, these accused persons disclosed the name of accused Rama Sahu as their accomplice whereupon the police conducted the raid and recovered seventy two items of gold and silver ornaments from his house. Items 5 to 50 of the seized articles are the properties which were allegedly stolen away from the house of the informant. While in custody, accused persons also led the police party to the house of one Sk. Jamir and from his house recovery of gold and silver ornaments, transistors, clothes and wrist watches were made. After arrest of the accused persons. Test Identification Parade was held inside the jail premises for the suspects and also for the incriminating articles. The identifying witness Nabakrushna Choudhury (P.W. 1) identified the culprits and the ornaments.

On completion of investigation, Charge Sheet was filed against the six accused persons, including the three appellants in these three Appeals to face their trial for the charges u/s 395/457, IPC.

The plea of the defence was one of complete denial.

Out of the six accused persons, other three having escaped from the jail, the case was splitted up and the trial in respect of the present three accused-appellants were taken up.

3. The learned counsel for the appellants" assails the order of conviction and sentence, mainly on the ground that the learned Additional Sessions Judge could not have placed any reliance on the identification of accused persons and stolen ornaments made by the informant since he had no occasion to see the faces of the accused persons, who had allegedly covered their faces inasmuch as the ornaments could only be identified by its wearer, his wife and not by her husband. The articles recovered at the instance of, and on the basis of confessional statements leading to discovery of the gold ornaments, ought to have been ignored. According to the learned counsel, the entire prosecution case is shrouded in mystery and based on inadmissible evidence on record and, therefore, the order of conviction and sentence is liable to be set aside.

4. It appears that the prosecution has examined ten witnesses in support of its case, P.W. 1-Nabakishore Choudhury, is the informant who is serving as an A.S.I, of Police and was on leave in his rented house at the time of occurrence and is an eye-witness, P.W. 2-A. Raja Rao is a journalist, who witnessed the police party

chasing the accused persons in the paddy field and is also a seizure witness. P.W.3-Sankar Sahu is the Circle Inspector of Police who was a member of the raiding party and present when the police surrounded and caught hold of them. He has witnessed the seizure of various articles and weapons of the crime. P.W. 5 is the doctor who examined the informant and granted certificate with regard to his injuries in his person. P.W.6 is the Havildar of Reserve Police who has issued the service revolver to P.W.1. P.W.7 seized the revolver and sent it for opinion of the expert, arrested the accused persons and after investigation submitted the charge-sheet. P.W.8 is the S.I. of Police who visited the spot soon after the occurrence and examined the inmates of the house, sent the injured-informant for medical examination. P.W.9 is the Inspector-in-Charge of Baidyanathpur Police Station who seized the revolver stolen from the house of the informant and P.W. 10 is another Inspector-in-Charge. The F.I.R. allegation was that the culprits entered into his house, tried him and took away the valuable, like cash and ornaments, they also took away his service revolver and cartridges. P.W. 1 has identified accused Sikandar Mullah, Sk. Jamir and Rama Sahu, who are the present appellants. The informant was serving as the A.S.I, of Police at Khajuriapada Out-Post under Saranga Police Station and he was on leave and remaining with his family members at Billo Sahi where the occurrence took place. The occurrence took place around 2.00 a.m. of 2-8-1990 and the light was burning inside the house. They went to sleep closing the doors. He found six miscreants entering into his drawing room by holding knife, sword and iron rod. According to him accused Sikandar Mullah was holding a knife and two of the other culprits tied his hands from back side with the napkin of his father. He has clear opportunity of identifying the accused persons with the help of the light burning in the house. A sword was put on his neck and the culprits asked his wife to give the gold and valuable ornaments which his wife obliged and handed over her bangles, Jhumpi and necklace out of fear. P.W. 1 and his wife were taken to the Store room at the point of knife along with his daughter and father. They demanded the key of the Godrej almirah and on the threat of stabbing her husband, she parted with the key. P.W. 1, however, was assaulted by means of an iron rod and he sustained injuries. The miscreants opened the almirah and took away some gold and silver ornaments and cash of Rs. 2,000/-. The service revolver bearing No.GA 17 along with 30 rounds of live cartridges were taken away by the culprits. They had used pencil torch to search out different articles, whereafter they closed the Store room by keeping the inmates inside the house. Some of the neighbours came to the house at their call to rescue them after the culprits left the place. Ext. 1 is the F.I.R. lodged by the informant (P.W. 1). P.W. 1 identified the articles in the Court also. During routine patrol on suspicion the accused persons were apprehended. After arrest of all these accused persons, their complicity in the present crime was discovered. The service revolver was recovered from one of the accused persons. P.W. 2 is a journalist who found the police chasing the culprits at Fulta crossing. He was a witness to arrest of two accused persons and also recovery of revolver, hand bombs and live cartridges. He was a witness to the confessional statement leading to discovery. P.W. 2 went

to the house of accused Rama Sahu at Lanjipali village and witnessed the recovery of 72 items of valuable like cash, gold and silver ornaments. He is a witness to the search and seizure of 22 items of valuables from the house of Sk. Jamir and also accused Abdul Quaddir wherefrom further recovery of cash, clothes, utensils, wrist watches and other articles were made. This witness has deposed that the service revolver G.A. 17 with five cartridges and hand bombs were recovered and seized. He also had witnessed the recovery of monkey cap, house breaking instruments, knives, one country-made pistol, one live 0.38 bullet. He has been cross-examined extensively, but nothing substantial has come out. P.Ws. 3, 8 and 10 are Police Officers who raided the spot and caught hold of the accused persons. P.W. 8 took up investigation at the direction of the Inspector-in-Charge. He examined P.W.1 and other inmates of the house. A Scientific team was deputed to the spot and P.W.1 was sent for medical examination. He handed over the charge of investigation to S.I.-R. Mohan Rao. P.W.9 took charge of the investigation from the Inspector Sri B. K. Patnaik who submitted the Charge-Sheet. P.W. 10 was present along with other police staff when (sic) accused Sikandar Mullah, Abdul Quaddir. He caught hold of accused Abdul Quaddir. He seized four numbers of live hand bombs and 0.38 police revolver loaded with five rounds leaving a chamber vacant. He has testified that another officer caught hold of accused Sikandar Mullah. At the instance of these accused persons, house of Sk. Jamir was searched and several items were recovered. M.O.I., the service revolver and the Cartridges were seized on the site of arrest, subsequently valuables were recovered which were identified by the informant to be belonging to his wife and stolen. On the information given by the co-accused persons in custody, recovery of other items were made from the house of accused Rama Sahu and Sk. Jamir which was proved by P.W. 2. The learned Judicial Magistrate, First Class conducted the T.I. parade on 22-3-1991 and P.W. 1 identified accused Sikandar Mullah, Sk. Jamir, Abdul Quaddir, Rama Sahu and ManOrulu Mullah inside the jail from amongst other 67 U.T.Ps. Ext.9 is the report. He conducted T.I. parade of properties in Court hall and P.W. 1 identified the ornaments used by his wife. Ext. 10 is the report of P.W.4. P.W.1 correctly identified the accused persons in the T.I. parade.

5. In view of the clinching material discussed above, the prosecution case that the accused-appellants along with three others committed dacoity in the house of the informant (P.W. 1) is established. The accused persons were caught red handed on the spot and the police got clue from the arrested persons and raided the house of accused Rama Sahu and Sk. Jamir. Properties were recovered from their house and those were identified by P.W. 1 and other owners. It appears that the other three accused persons had escaped from the jail custody. M.Os. I, VI and VII were stolen from the rented house of P.W. 1 by use of force by the accused-appellants along with three others which were recovered from their possession. There is nothing on record to disbelieved the seizure also. Possession of M.O.I., the service revolver issued in favour of the informant A.S.I, by one of the accused persons goes a long way to substantiate the prosecution case. In

such view of the matter, I do not find any illegality and infirmity in the order of the learned Additional Sessions Judge, Berhampur in convicting the accused-appellants and sentencing them thereunder.

6. In the result, the Appeals are dismissed, the order of conviction and sentence passed by the learned Courts below is confirmed.