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(2012) 10 PAT CK 0015

In the Patna High Court

Case No : Criminal Appeal (SJ) No. 275 of 2000

Md. Imamuddin and Another — APPELLANT

Vs

State of Bihar — RESPONDENT

Date of Decision : 04-10-2012

Acts Referred:
Penal Code, 1860 (IPC) — Section 395, 412

Citation : (2013) CriLJ 269

Hon'ble Judges : Sheema Ali Khan, J

Bench : Single Bench

Advocate : Kishna Prasad Singh and Smt. Meena Singh, for the Appellant; Sujit Kumar Singh, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

Sheema Ali Khan, J.—These three appellants have been found guilty of an offence u/s 395 of the Indian Penal Code and sentenced to undergo R.I. for seven years. They have also been convicted u/s 412 of the Indian Penal Code to undergo R.I. for two years by the 1st Additional Sessions Judge, Saharsa in Sessions Trial No. 44/98. The allegation against the appellants is that they along with others committed dacoity in a running train bearing number 1418 UP in Coach (Bogi) No. 7888 Y on 7.10.1997. After committing dacoity, the miscreants pulled the chain and got off the train. The passengers and the escort party chased the miscreants and caught the appellants on the spot. Recovery of stolen articles was also made and the articles were handed over to the passengers. Appellant, Md. Imamuddin @ Fudiya has remained in custody for 3 years, 11 months and 13 days, Md. Ibrahim has stayed in custody for 3 years, 7 months and 2 days whereas, appellant Umesh Paswan has remained in custody for 3 years, 11 months and 13 days.

2. The prosecution in order to support their case has examined ten witnesses. P.W. 1 P.W. 4, P.W. 5, P.W. 6, P.W. 7, P.W. 8 and P.W. 9 are the passengers who were travelling in the train on the date of occurrence. They have all turned

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hostile inasmuch as they have supported the occurrence but have not been able to identify the appellants in Court.

3. P.W. 10 is the Guard. He has supported the occurrence inasmuch as he says that a dacoity had taken place. The miscreants were chased and caught on the spot. However, he has stated that he does not remember the face of those persons who were caught during the chase.

4. P.W. 2 is the member of the escort party who was travelling on the train. He supports the occurrence in totality. Regarding identification he says that he is unable to identify the appellants due to the fact that he had only seen them on that one occasion.

5. P.W. 3 is the Officer Incharge of Saharsa Rail Police. When he heard about the occurrence, he rushed to the place of occurrence and was handed over the First Information Report and the accused persons. He also conducted the search and seizure and made a seizure of the articles recovered from these accused persons. He makes a mistake while identifying appellant No. 3, Umesh Paswan.

6. Learned counsel for the appellants argues that the persons who were responsible for apprehending and taking accused to the jail was in a position to remember the face of the accused persons and the persons caught at the place of occurrence and have thus, identified the appellants. It is submitted that it is not safe to rely on the evidence of such a witness as he is interested in supporting the prosecution case. This Court finds that this witness has no reason to lie. He was not responsible for apprehending them rather he reached the place of occurrence after the miscreants were apprehended and as such there is no question of falsely implicating the appellants by P.W. 3.

7. In this case, the Court comes to a finding that all the appellants have remained in custody for substantial amount of time. In fact they have undergone more than 50% of their sentence. It has also to be taken into account that the independent witnesses have all turned hostile and as such, this Court should not rely solely on the evidence of the officer-in-charge of the Police Station who received the First Information Report for the purposes of sending the appellants back to custody in this case. In the circumstances, this Court concludes that the appeal is dismissed with alteration in the sentence as period already undergone.

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