
(2006) 05 JH CK 0032

In the Jharkhand High Court

Case No : Criminal Appeal No. 260 of 1998 (P)

Mohan Kapri

APPELLANT

Vs

The State of Bihar (now Jharkhand)

RESPONDENT

Date of Decision : 03-05-2006

Acts Referred:

Penal Code, 1860 (IPC) — Section 395

Citation : (2006) 05 JH CK 0032

Hon'ble Judges : Amareshwar Sahay, J

Bench : Single Bench

Advocate : P.K. Verma, Amicus Curiae, for the Appellant; T.N. Verma, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Amareshwar Sahay, J.—This appeal arises against the judgment dated 19/06/1998 passed by the 1st Additional Sessions Judge, Dumka in Sessions Trial No. 130/1997 whereby and whereunder the learned Additional Sessions Judge convicted this appellant for the offence u/s 395 IPC and sentenced him to undergo R.I. for a period of 10 years. The other two accused, who were tried with the present appellant were however acquitted from the charges by the same judgment.

2. In short the prosecution case is that on 19/10/1996 at about 5.15 A.M. PW- 1 Shiv Shankar Pd. Singh lodged a First Information Report before Hansdiha Police Station stating therein that on that day at about 3.15 A.M. he was on duty in a running bus bearing Registration No. BR 20-P-0061 and he was having his licensee double Barrel Gun with him. He alleged that he changed the bus bearing registration No. BR 17 P- 6261 and he found that there was rush in the said bus and he did not find any seat for his own and, therefore, was standing in the bus. The said bus was coming from Bokaro and was going to Bhagalpur. When the said bus reached near Kurmahal, Mukesh Singh and four other persons surrounded the informant at the point of pistol and asked him to handover his

gun, failing which they would shoot him. They also forcibly took his gun. Two accused persons asked the driver to stop the vehicle after threatening him and then it is said that they started looting the passengers of the said bus.

3. The informant claimed to identify the miscreants on seeing them. In course of investigation the accused persons were arrested and it is said that this appellant was identified by PW-1, i.e. the informant in the T.I. parade.

4. In all six prosecution witnesses were examined during the trial. It appears that PW-1 i.e. the informant, PW-2 Devendra Kapri and PW-3 Katki Mahto were declared hostile by the prosecution, whereas PW-4 Niranjan Kumar Kapri was tendered for cross-examination. PW-5 is Mr. G.K. Rai, Judicial Magistrate, who held T.I. parade on 05/12/1996 and PW-6 is the Investigating Officer.

5. It appears that the learned trial court, on the basis of the evidence of PW-1 i.e. the informant and Ext.- 2, i.e. the T.I. Chart of the appellant wherein the said PW-1 had identified him in the T.I. Parade, held on 05/12/1996, has held the appellant guilty for the offence u/s 395 IPC and sentenced him as stated in the earlier paragraphs.

6. The learned Counsel appearing for the appellant, assailing the conviction and sentence passed by the trial court, has submitted that there is no evidence at all on the record for holding the appellant guilty u/s 395 IPC as even the informant has been declared hostile and if his testimony is discarded or rejected there is no other evidence at all on the record so as to find the appellant guilty for the offence u/s 395 IPC.

7. On the other hand the learned Counsel for the State stated that though PW-1 has been declared hostile by the prosecution but as it appears from his evidence that since he tried to help other two co-accused by not identifying them and, therefore, he was declared hostile. So far as the present appellant is concerned, PW-1 has specifically stated that he saw him in course of commission of dacoity in bus and he also identified him in T.I. parade. In such a situation the State counsel submitted that the conviction of the appellant for the offence u/s 395 IPC is perfectly justified.

8. After going through the evidence of PW-1, i.e. the informant, I find that this witness cannot be said to be a reliable witness. From his evidence I find that he has resiled from her earlier statement made before the police and he did not identify the other accused persons, therefore, he cannot be said to be a truthful witness.

9. In view of the change of the stand of PW-1, the prosecution declared him to be hostile. Therefore, it appears that the prosecution also did not rely on the evidence of PW-1, who resiled from his earlier statement, made during investigation. Therefore, it is not safe to rely on the evidence of PW-1 and, as such, the evidence of PW-1 is rejected.

10. I find that there is no other evidence on record to sustain the conviction of

appellant for the offence u/s 395 IPC.

11. In view of discussions and findings above, I hold that the prosecution has not been able to establish the charges against the appellant beyond all reasonable doubts.

12. Accordingly, this appeal is allowed. The conviction and sentence passed by the trial court against the appellant is hereby set aside. The appellant, who is on bail, is discharged from the liabilities of his bail bonds.