
(2003) 04 JH CK 0117

In the Jharkhand High Court

Case No : Criminal Appeal No. 305 of 2000 (R)

Munshi Mahto

APPELLANT

Vs

State of Bihar (Now Jharkhand)

RESPONDENT

Date of Decision : 28-04-2003

Acts Referred:

Penal Code, 1860 (IPC) — Section 395

Citation : (2003) CriLJ 4177 : (2003) AIR Jhar HCR 1169 : (2003) 3 CurCriR 655 : (2003) 2 JCR 731

Hon'ble Judges : D.N. Prasad, J

Bench : Single Bench

Advocate : Dilip Kumar Prasad and Sumir Prasad, for the Appellant; Amaresh Kumar, Additional Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

Deoki Nandan Prasad, J.—This appeal is directed against the judgment of conviction and sentence dated 24.7.2000 passed by Shri Shyam Kishore Sharma, 3rd Additional Sessions Judge, Hazaribagh in Sessions Trial No. 307 of 1998 whereby and whereunder the learned 3rd Additional Sessions Judge convicted the appellant for tile offences u/s 395 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for ten years.

2. The prosecution case in brief is that one Damodar Yadav registered a case alleging therein that in the evening when he was returning on a bicycle to his village Bargaddakhurd from Hazaribagh in the way near Paratand More on Hazaribagh-Katkamsandi Road, six miscreants surrounded him and one of the miscreants on the point of pistol snatched Rs. 242/- and also snatched H.M.T. Kanchan wrist watch. It is further alleged that on the same place, the miscreants also snatched away money from the other villagers who were passing through that way. The villagers Vijay Singh and Bhola Sao were also looted away by the miscreants and on their hulla several villagers came there; they chased the miscreants and succeeded in apprehending the appellant. The appellant

confessed his guilt before the informant and other villagers and also disclosed the name of his other associates. Accordingly, a first information report was lodged and the police investigated into the case and after investigation submitted charge sheet against the ace used/appellant. The accused/appellant appeared before the 3rd Additional Sessions Judge where charge was framed to which he along with others pleaded not guilty. Witnesses were examined before the trial Court and after hearing both sides, the learned trial Judge convicted and sentenced the appellant in the manner as stated above, hence this appeal.

3. Altogether nine witnesses have been examined on behalf of the prosecution to prove its case, of whom PWs 1, 2, 8 and 9 are formal witnesses. PW 3 stated that when he along with Bhola Sahani was returning to his village, six miscreants surrounded them and started looting money from them. According to him, one miscreant was apprehended on chase. His name was Munshi Mahto. It may be noted here that Munshi Mahto (the appellant) is a resident of Village Paratand, Police Station Katkam-sandi in the district of Hazaribagh. He further stated that he has not seen the face of the miscreants because of darkness. PW 4 is also one of the victims and he, accordingly, also stated that the appellant Munshi Mahto was apprehended on chase at the relevant time. PW 5 (Damodar Yadav) is the informant of the case. According to him, while he was coming from Hazaribagh, the miscreants surrounded him and snatched his H.M.T. Kanchan Wrist Watch and also a sum of Rs. 240/-. He further stated that Munshi Mahto was apprehended at the spot by the villagers on chase. He proved that fardbeyon as Ext. 3. He also claimed to have identified his wrist watch in the test identification parade and he also put his signature on the test identification parade as Ext. 1/2.

4. PW 6 also claimed that a sum of Rs. 25/- was snatched by the miscreants on the point of Chaku. He further stated that on chase one Munshi Mahto was apprehended by the villagers. He also claimed to have identified the appellant in the dock during trial though he denied to have identified the other accused persons. He was cross-examined at length but nothing could have been elicited on this score. PW 7 is also one of the victims and, according to him Rs. 50/- was snatched by the miscreants. He further stated that one Munshi Mahto was caught red handed at the spot by the villagers. According to him, he also gave his statement before the police and stated every thing about the incident to the villagers. He deposed in his cross-examination that miscreants have concealed their face from gamchha and, as such, he could not identify them at the spot.

5. From perusal, it appears that all the victims including the informant have supported the prosecution case consistently and they are also consistent in deposing that one person said to be named as the villagers caught Munshi Mahto at the relevant time. The appellant was duly identified in the dock by PW 5 also. It is true that there is some contradictions as regards to the identification because of night but all the witnesses are consistent about the fact that one person was caught red handed at the spot on chase by the villagers and they were victimized by the miscreants by looting away their cash and wrist watch. It

may be noted here that the appellant is also a resident of Katkamsandi police station and as such the witnesses are knowing the appellant by name as well and so the story of his apprehension by the villagers at the spot cannot be ruled out. It is true that the other accused persons facing trial who actually were not apprehended and named by the person caught red handed at the spot, namely, Munshi Mahto, were neither put in the test identification parade nor they were identified in the dock during trial.

6. Having regard to the above facts and circumstances, there appears that the learned trial Court has rightly convicted the appellant for the offence u/s 395 of the Indian Penal Code and accordingly his conviction is confirmed. But having regard to sentence, it is apparent that the appellant has been in custody since 24.10.1997 and, as such, in my view, he has sufficiently been punished for the offence charged which will suffice to modify his sentence to the period already under-gone by him in jail.

7. In the result, the appellant Munshi Mahto is sentenced to undergo the period already undergone by him in jail custody in the case.

8. With this modification in the sentence only, this appeal is dismissed. The appellant, namely, Munshi Mahto, is directed to be released forthwith, if not wanted in any other case.