

(2020) 07 JH CK 0097

In the Jharkhand High Court

Case No : Criminal Appeal (S.J.) No.504 of 2006

Nagendra Saha @ Nagendra Chandra Saha And Ors

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 10-07-2020

Acts Referred:

Indian Penal Code, 1860 — Section 395, 397
Arms Act, 1959 — Section 27, 27(2)
Code Of Criminal Procedure, 1973 — Section 313

Citation : (2020) 07 JH CK 0097

Hon'ble Judges : Rajesh Kumar, J

Bench : Single Bench

Advocate : Rajeeva Sharma, Rita Kumari, Nehala Sharmin

Final Decision : Allowed

Judgement

1. A report has been called for from the concerned police station regarding life status of all the appellants vide order dated 08.01.2020.

In compliance of order dated 08.01.2020, a report from Rajmahal Police Station, Sahibganj has been brought on record in which it appears that

appellant no.1 namely Nagendra Saha @ Nagendra Chandra Saha, appellant no.2 namely Rajan Prasad Saha @ Rajendra Prasad Saha and appellant

no.3 namely Sudhir Saha are dead and appellant no.4 namely Subol Chandra Saha @ Subol Sah and appellant no.5 namely Birju Saha are alive.

2. Heard. Mr. Rajeeva Sharma, learned senior counsel appearing for the appellants and Ms. Nehala Sharmin, learned A.P.P. appearing for the State.

3. This appeal is directed against the judgment of conviction and order of sentence dated 30.03.2006 passed by Sri Binay Kumar Sahay, Additional

Sessions Judge-I, Rajmahal in Sessions Case No.242 of 1981, whereby and whereunder the appellants have been convicted for the offence under

Sections 395 read with Section 397 of the Indian Penal Code and Section 27 (2) of the Arms Act and sentenced to undergo rigorous imprisonment for

seven (07) years for the offence under Section 395 read with Section 397 of the I.P.C. with a fine of Rs.1000/- each, in default thereof to undergo

S.I. for three months. The appellants were also sentenced to undergo rigorous imprisonment for two (02) years for the offence under Section 27 of the

Arms Act. Both the sentences were directed to be run concurrently.

4. The criminal law has been put into motion by lodging FIR by the informant namely Bibhuti Chandra Sah (now deceased) on 20.08.1979. In the FIR

four persons have been named including appellants nos. 4 and 5 namely Subol Chandra Saha @ Subol Sah and Birju Saha. It has been alleged that on

19.08.1979 at about 6 o'clock in the morning when the informant was sleeping along with his family members in his house, ten to fifteen dacoits had

entered his house through roof top. They overpowered him and his family members and looted household articles worth Rs.9,836/- including cash of

Rs.4000/-. During dacoity one fire has been made from the gun and the informant had also been hit from the back side of the axe resulting in injury to

him. On the basis of the said FIR, investigation has been done and altogether 12 persons have been charge-sheeted by the police. Charge has been

framed against 11 persons.

5. After conclusion of investigation, the appellants had been charge-sheeted under Section 395 read with Section 397 of the Indian Penal Code and

under Section 27 of the Arms Act to which cognizance has been taken and the case has been committed to the court of sessions. The charge has

been framed under Section 395 read with Section 397 of the Indian Penal Code and under Section 27 of the Arms Act to which appellants pleaded not

guilty and claimed to be tried.

6. To substantiate the prosecution story, altogether six (06) witnesses have been examined.

P.W.1-Satyabala Dasi is the wife of the informant, has supported the FIR. In para-22 of the cross-examination she has deposed that accused are

close relative related by the marriage of her daughter with the son of Nagendra Saha @ Nagendra Chandra Saha. Further in Para-24 of the cross-

examination she has deposed that the accused persons are the next door neighbours also. P.W.2- Khagen Chandra Saha is the son of the informant

and also an eye- witness. He has also supported the factum of dacoity. He has also admitted in his cross-examination that the accused are close

relatives and this fact has not been disclosed in the FIR. Further four accused have been identified because none of the dacoits were covering their

faces. P.W.3-Manjura Devi is the wife of the appellant no.4 namely Subol Chandra Saha @ Subol Sah, has supported the factum of the dacoity but

has not identified any of the accused. P.W.4-Niranjana Saha is the nephew of the informant and he is not eye witness but a seizure list witness which

has been marked as Ext.2. P.W.5-Santosh Chandra Saha has deposed that he was awoken on hearing the sound of gun shot. He has claimed that he

saw the commission of dacoity and has also identified Rajendra Chandra Saha, Birju Saha and Subol Chandra Saha @ Subol Sah. In his cross-

examination he has admitted that the informant is his maternal uncle. P.W.6-Anil Saha is a seizure list witness, has proved his signature on Ext.3.

7. The Investigating Officer has not been examined in the present case. On conclusion of evidence, the accused have been examined under Section

313 of the Cr.P.C. and their defence was of total denial and it has been stated that they have falsely been implicated in the case as there is a previous

litigation between the parties including one criminal case has been lodged by the accused which has resulted in compromise between the parties.

8. Counsel for the appellants has assailed the judgment of conviction by taking plea that all the witnesses are related to each other and no independent

witness has been examined, although it has been stated that the villagers have assembled. No injury report has been brought on record although it has

been stated that the informant has been hit on the head by the backside of the axe. There is an enmity between the parties and they are next door

neighbours and also related by marriage as daughter of the informant is married to the one of the member of the accused persons. It has been argued

that even the factum of the dacoity has not been proved as no seized articles have been produced and non-examination of the I.O. has caused serious

prejudice to the appellants. Further the incident is of the year 1979 while the witnesses had been examined in the year 2005 and this long delay is

sufficient to discard or at least to be cautious vis-a-vis oral testimony of the witnesses.

9. On the other hand counsel for the State has supported the impugned judgment of conviction and order of sentence dated 30.03.2006.

10. From perusal of materials available on record, it transpires that there are four eye witnesses to the incident. P.W.1-Satyabala Dasi is the wife of

the informant, P.W.2-Khagen Chandra Saha is the son of the informant and P.W.3-Manjura Devi is the wife of one of the accused namely Subol Sah

@ Subor Chandra Saha, P.W.5-Santosh Chandra Saha is the nephew of the informant. The informant has died and as such he could not be examined.

Except oral testimony of above witnesses, there is no material available on record. Although, injury has been stated but no injury report has been

produced. Even the seized articles have not been produced. The I.O. has also not been examined in the case. The witnesses have been examined

after 25 years of the incident. Admittedly there is an enmity between the parties as earlier a criminal case has been lodged by the accused against the

informant which has resulted in compromise between the parties. They are next door neighbours.

11. In view of above discussion, this court finds that the prosecution has failed to prove by bringing on record sufficient material/evidence on record,

proving the factum of dacoity and also connecting the accused with the alleged dacoity. This court finds no sufficient material on record, resultantly,

the accused are acquitted from the charges under Section 395 I.P.C. read with Section 397 I.P.C. and Section 27 of Arms Act. Consequently, the

judgment of conviction and order of sentence dated 30.03.2006 passed by Sri Binay Kumar Sahay, Additional Sessions Judge-I, Rajmahal in Sessions

Case No.242 of 1981 is, hereby, set aside.

12. Since the appellant nos.4 and 5 are already on bail, they are discharged from the liability of their bail bonds.

The present appeal stands allowed.