
(2011) 07 PAT CK 0119

In the Patna High Court

Case No : Criminal Appeal (SJ) No. 118 of 1997

Naresh Rajbanshi and Others

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 14-07-2011

Acts Referred:

Arms Act, 1959 — Section 27

Penal Code, 1860 (IPC) — Section 307, 34, 353

Citation : (2011) 07 PAT CK 0119

Hon'ble Judges : Gopal Prasad, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Gopal Prasad, J.—Heard learned Counsel for the Appellants and learned Counsel for the State.

2. The Appellants have been convicted u/s 307/34 and 353 of the Indian Penal Code and 27 of the Arms Act and have been sentenced to undergo rigorous imprisonment for five years for the offence u/s 307/34 of the Indian Penal Code and one and half years for the offence u/s 353 of the Indian Penal Code and two years for the offence u/s 27 of the Arms Act and all the sentences had to run concurrently.

3. The prosecution case as alleged by the informant is that while he was on patrolling duty at Aurangabad-Patna Road, he learnt that road dacoity was done then he rushed to the place of occurrence and found that 4-5 criminals were clinching with driver's cabs of two trucks and the drivers and cleaners were seen the police crying for help and disclosed about the commission of dacoity. It has further been alleged that thereafter the criminal started fleeing away and it has further been alleged that they opened fire aiming at the police and the police also resorted to firing in defence and though the police personnel, drivers and cleaners chased the criminals to catch hold but the criminal escaped away taking advantage of darkness of the night.

4. On the report of the S.I., FIR was lodged for offence u/s 307/34 and 353 of the Indian Penal Code and 27 of the Arms Act and after investigation charge-sheet was submitted and the case was committed to the court of Session and charges were framed and during the trial seven witnesses were examined on behalf of the prosecution party, apart from that four Exts. 1, 2, 3 and 4 were proved in evidence which are the fardbeyan, formal FIR, signature on the formal FIR, endorsement of the written report and Test Identification Parade Chart and after considering the oral and documentary evidence the order of conviction and sentence recorded as stated above.

5. Learned Counsel for the Appellants, however, contended that the FIR is against unknown. No case was filed by the truck drivers where the dacoity was going on. However, it is not alleged that who committed the dacoity nor the truck drivers or the Khalasis of the said truck adduced as a witness and the conviction has been recorded on the basis of two identification of P. Ws. 4 and 5 as the Appellants have been stated to have confessed in another case and were remanded in this case and the Test Identification Parade was conducted after more than years of the occurrence and though P. Ws. 4 and 5 have identified the Appellants in T.I.P. as well as in the court room but their evidence are not worthy of confidence to be relied upon under the facts and circumstances of the case when the occurrence is on the night and identification is by the two official witness only. It has further been contended that though there is allegation of firing but no injury on the police party or any persons and hence contended that the persons have not proved the charges beyond reasonable doubt.

6. However, out of the seven witnesses examined except P.W. 7 all are the police personnel and P.W. 7 is the Judicial Magistrate who has conducted the T.I.P. However, the occurrence is alleged to be dated 19.07.1996.

7. P.W. 3 is the Investigating Officer of this case yet he has stated in his evidence that at the time of occurrence he was along with Officer-In-Charge on evening on patrolling duty. On information about the dacoity of the truck he went along with the Officer-In-Charge and so the road had been restrained by drum of coaltar and 4-5 persons on the cabin of the truck and on seeing the police personnel the accused persons got down from the truck and went away towards the north of the truck on road to the east of the road and fleeing away taking advantage of the darkness and it is alleged that they fired on the police party causing obstruction to the police party and the police also fired. He has further stated that the police chased quite long distance but the miscreants fled away taking advantage of the darkness. However, he has stated that he conducted the raid and two accused persons were arrested in Daudnagar P.S. Case No. 123 of 1995 and they confessed the guilt and disclosed the name of his associates and then he took the Appellants on remand in this case and the order-sheet of the case shows that on 12.10.1995 they were taken on the remand in this case. However, Test Identification Parade was conducted on 08.01.1996 as per the evidence of P.W. 7.

8. However, P. Ws. 5 - 6 claimed to have identified in the Test Identification Parade as well as in the court. However, P.W. 5 in his evidence in para 9 has stated that when he returned after chasing the accused person, the Officer-In-Charge asked then he disclosed that though the I.O. has identified but he did not mention the colour, built or any special mark about the accused persons and P.W. 6 has also stated that he has not stated about the figure or any special mark about the accused person to the Officer-In-Charge.

9. Hence, having regard to the facts and circumstances and the evidence adduced the police party learnt about the dacoity and raided the place of occurrence and then it is alleged 4-5 persons hanging on the truck started getting down from the truck and went in the truck portion and then they were chased by the police party for quite distance but the accused persons fled away taking advantage of the darkness. Hence, it is admitted that the place where the accused persons were chasing there was not lighted but was dark and the accused persons fled away taking advantage of the darkness and hence the identification in dark does not inspire confidence. Moreover, the occurrence is of the year 19.07.1995 and the T.I.P. after about 5-6 months and the accused persons were not known and further though there is allegation that there was firing but no one received injury by the said firing and there is no mention that who fired though there is allegation that they were five persons.

10. Hence, taking into consideration the entire evidence that there is no mention by the two witnesses P. Ws. 4 and 5 that when the P. Ws. 4 and 5 identified the accused persons, what commission and omission were being committed by these Appellants and hence having regard to the fact that the Test Identification Parade conducted after 5 - 6 months and the witnesses have not stated what act was being done by the Appellants while they were identified and however, the fact as per the evidence of P.W. 3 and other witnesses that when the police party reached there the accused persons got down from the truck and fled away taking advantage of the darkness. However, neither any case was lodged by the truck drivers or the Khalasis of the said truck nor any evidence by the said Khalasis or drivers and, hence under the facts and circumstances the identification of the Appellants does not inspire confidence and the conviction and sentence on the basis of this identification is neither proper nor sustainable hence I do not find that the prosecution has been able to prove the charges and hence the order of conviction and sentence recorded by the learned lower court is hereby set aside and the appeal is allowed.