
(2011) 04 PAT CK 0151

In the Patna High Court

Case No : Criminal Appeal (SJ) No. 1 of 1994

Paras Rai, Chandeshwar Rai and Sakaldeo Thakur

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 01-04-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 395

Citation : (2012) 1 Crimes 261

Hon'ble Judges : Dharnidhar Jha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Dharnidhar Jha, J.—The three Appellants were put on trial by the learned Sessions Judge, Gopalganj, by framing charge u/s 395 of the Indian Penal Code. By the judgment dated 22.12.1993, delivered by the learned 3rd Additional Sessions Judge, Gopalganj in Sessions Trial No. 101 of 1986/19 of 1992, the three Appellants were found guilty of committing the said offence and each of them was directed to suffer rigorous imprisonment for five years. As regards 4th accused Shri Kant Thakur, he was also put on trial along with the present set of Appellants and he was acquitted of the charge after extending the benefit of doubt to him.

2. There is no dispute about the fact that a dacoity was committed in the house of the informant Rameshwar Thakur on 16.1.1992 at about 11 P.M. in which Rajesh Kumar Mishra, P.W.5, was injured. It is also not disputed that the police had recovered certain articles, like khanti, etc. which were used in assaulting the injured during the course of dacoity. Besides, it had also seized blood stained earth from the place of occurrence. The Appellants are not disputing the fact that the properties might have been looted away from the house of the informant. However, what they are disputing is that on account of deep rooted enmity which was continuing on the day of the occurrence also, they had been falsely implicated by being named in the F.I.R.

3. P.W.1 had investigated the case and had recorded the objective finding and found blood stained khanti and other articles outside and inside the house of the informant and stated that he had seized them. He stated that he wanted to record the statements of the witnesses but they were stating to him that unless Rameshwar Thakur, P.W. 8, had not come back from Gopalganj, they would not make any statement. This is worth mentioning that the said Rameshwar Thakur is the informant of the case and on the basis of his long statement given in his fardbeyan, the F.I.R. of the case was drawn up.

4. The facts have also been revealed from the evidence adduced in the case that the case initially was found not true as regards the implication of these Appellants and final form was also submitted but the investigation was transferred to C.I.D. on account of some political manoeuvre and, ultimately, the accused persons were put on trial.

5. P. Ws. 4 and 5, namely, Shailendra Kumar Mishra and Rajesh Kumar Mishra are the only eye witnesses to the real part of the occurrence. P.W.8 going hostile, stated in his cross-examination that enmity was existing in between his family and that of the accused persons prior to the occurrence. Besides, the accused persons had concealed their identities and it was not possible to identify any of them. While being cross-examined after being declared hostile by the prosecution, P.W.8 was volunteering that whatever he stated to the police was on account of being told by the villagers. Thus, what P.W.8 was pointing to the court was that what was told to him was not containing the real story which could have been seen by him or which could have been told by his family members to him. The evidence of P. Ws. 2 and 3 is merely on the circumstances of the offence. P.W. 2 Bachcha Rai whose village was at 1- 1 1/2 K.M. away from the village of occurrence, i.e., Maharani was telling the court that he was out of his house to attend the call of nature. He disclosed that some persons were taking toddy. He identified the accused persons named in the F.I.R. But, this evidence appears quite some bit of an interested person as P.W.2 has admitted in paragraphs 9 and 10 of his evidence that he had earlier deposed against the Appellants also in two criminal cases. Similar is the fate of the evidence of P.W. 3 Ram Ayodhya Rai who claimed identifying the Appellants and other accused while they were passing through the bandh which was situated in front of his house and the witness was enjoying fire to avoid cold. The evidence of this witness also could not be fit to be acted upon in the light of the facts stated by him in paragraphs 10 and 11 of his evidence in which he has stated that there were serious enmities between the prosecution party and the accused persons to which P.W. 3 was also a party from the side of the informant. Another important fact which has been stated by P.W. 3 in Paragraph 13 of his evidence is that the house of the informant and that of Appellant Sakaldeo Thakur was opposite each other.

6. Above is the background in which the evidence of P. Ws. 4 and 5 has to be considered. The two witnesses have specifically named the Appellants and other accused persons claiming to have identified them during the course of

commission of dacoity. But, one important aspect which is available as a common factor in the evidence of P. Ws. 4 and 5 is that both of them stated to the court that some of the accused persons had concealed their identities but some of them who were their next door neighbours and known to them, they had not concealed their identities. This absurd story on identification of the Appellants could itself be sufficient to reject the whole story of the Appellants having participated in the commission of the offence. This has to be done when one considers that the two witnesses, P. Ws. 4 and 5 have admitted being accused or witnesses in cases either filed by the accused persons or filed by any of the family members of the two witnesses against the accused or others on his side. Reference may in this behalf be made to paragraphs 15 and 16 of the evidence P.W. 4 and paragraphs 17 and 18 of the evidence of P.W. 5. As regards absurdity and improbability of the evidence on identification that the Appellants had not attempted to conceal their identities, reference could also be made to paragraph 26 of the evidence of P.W.4 and paragraph 12 of the evidence of P.W. 5.

7. What appears from the discussion of the evidence is that the participation of the accused persons would simply not to be acceptable in commission of the dacoity for a couple of reasons, including one that the informant and the accused persons were inimical to each other and they were next door neighbours as has been stated by P.W.3 in paragraph 13 of his evidence. The basic allegation in the fardbeyan is that they had held out threats that they would get the dacoity committed in the house of the informant and would get the informant killed. From the strong circumstance of holding out threats lurking from the evidence which could be on account of deep enmity between the informant and the accused, I find that the accused persons were suspected to have managed the commission of dacoity in the house of the informant and on account of that apriori suspicion, they were implicating the accused persons.

8. What I find from the evidence on account of the above inference which I have drawn, the accused persons ought not have been convicted in the case and they deserved to be acquitted on account of the probability being very much present that they might have been implicated in the case.

9. In the result, the appeal succeeds, the judgment of conviction and order of sentence passed against each of the Appellants are hereby set aside and the Appellants are acquitted.

10. The three Appellants are on bail. They shall stand discharged from the liabilities of their respective bonds.