
(2006) 04 JH CK 0064

In the Jharkhand High Court

Case No : Criminal Appeal No. 1 of 2001 (R)

Raghubir Tiwari and Others

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 25-04-2006

Acts Referred:

Penal Code, 1860 (IPC) — Section 395

Citation : (2006) 04 JH CK 0064

Hon'ble Judges : Dhananjay Prasad Singh, J

Bench : Single Bench

Advocate : T.R. Bajaj and B.K. Dubey, for the Appellant; S.K. Srivastava, APP, for the Respondent

Final Decision : Allowed

Judgement

D.P. Singh, J.—This appeal is directed against the judgment of conviction and sentence dated 30.11.2000 and 5.12.2000 passed in Sessions Trial No. 162 of 1985, whereby and whereunder the learned 3rd Additional Sessions Judge, Chatra held all the appellants guilty under Sections 395 IPC and convicted and sentenced them to undergo RI for four years.

2. The brief facts leading to this appeal are that in the evening at 6 PM on 18th March, 1982 when the informant Prabodh Kumar Pandey was sitting along with his wife and sister's son Shyam Sunder Pandey near the Darwaja in village Hurmur, P.S. Simaria, District Hazaribagh, he saw 7 persons coming towards them. It is further stated that when the informant enquired where they were going at this time, they started assaulting him saying that they have come in his search. Acceding to the informant, he saw two others coming towards his house and identified the appellants variously armed with weapons. Apprehending further assault, he started fleeing towards the house of Mangal Tiwari but fell down near the house of Chhedi Bhuiyan. According to him, he was dragged inside the house by females inmates of the house and kept concealed in a room. In the meantime the villagers assembled and he was taken out of the house after

one hour. Thereafter the informant asked for his gun from his brother, who brought it and he sat with the gun fearing further attack from the assailants. He even requested the villagers to carry him to police station but was advised not to venture in the dark as the assailants were waiting there. As such, he waited till morning, when Choukidar reported that one bag containing Maflar, Sandals and one country made pistol was left by the assailants near the house. His wife also informed that she saw the assailants, who looted the household articles from her house.

3. The statement of the informant was recorded by Simaria police in the morning of 19.3.1982, on the basis of which Simaria P.S. case No. 99/82 was registered u/s 395 IPC against the appellants and some unknown persons. The informant was sent for medical examination and treatment. Police further investigated the case and submitted charge sheet against all the appellants. The case was committed for trial by the court of sessions, the appellants were charged u/s 395 IPC and trial commenced. However the trial continued for near 15 years and the impugned judgment was passed on 30.11.2000, by which the learned trial court found and held the appellants guilty u/s 395 IPC.

4. This appeal has been preferred on the ground that the learned lower court has committed mistake of law and facts. According to memo of appeal, the story of dacoity could not be proved even with the evidence of interested witnesses. It is further asserted that the appellants and the informant were at daggers drawn due to land dispute going on between them from 1981. According to this memo of appeal, the prosecution version reeks from falsehood as the informant has named the appellants to have assaulted him with the intention to commit dacoity in his village in the evening itself, which is apparently not probable. It is also asserted that the story of dacoity further could not be believed in absence of the mention of stolen articles in the fard beyan itself, which was later on improved during the examination in chief before the court. The other point raised in this memo of appeal is that though appellants are said to have assaulted with various weapons, the injury report does not support it. It is also submitted that two of the appellants Ajay Tiwary and Bijay Tiwary were admittedly below 16 years of age, when the offence was committed but the trial was conducted along with other appellants, which is apparently illegal and not maintainable.

5. Learned Counsel for the appellants strenuously argued these points before me. According to the learned Counsel, the trial itself becomes vitiated in view of the admitted facts on record and observation of the learned lower court in para 29 of the judgment. It is submitted that when the trial court found and held that the appellants Ajay and Bijay were admittedly below 16 years of age, the provisions of Juvenile Justice Act or Childrens" Act was applicable, which prohibits common trial along with other adult accused persons. In this connection reliance was placed on various judgments of the Hon"ble Court. It is undisputed fact that whenever an accused is found to be below 16 years or 18 years of age at the time of alleged occurrence, he deserves to be treated juvenile and the law

prescribes different procedures to be adopted for their trial or enquiry. As such I find that this point has been overlooked by the learned court below and on this score alone the judgment of conviction cannot be maintained.

6. So far on the merits of the case, the learned Counsel for the appellants drew my attention towards the fact that when the occurrence took place during day light, the appellants may not go to assault the informant keeping their faces unconcealed. It is also asserted that in view of the admitted facts on record that there was litigation between the parties for considerable area of land since year 1981, false prosecution was possible. The learned Counsel drew my attention towards this fact on record from evidence of PW 6, the informant, PW 8, wife of the informant and PW 4, co-villager. The learned Counsel also pointed out towards para 2 of cross examination of PW 4, para 8, 10, 11, 16, 18, 19 of the statements of PW 6, where he admitted that appellants Raghubir Bijay and Ajay were grandsons of Ramu Tiwari but denied that the compensation for the lands were taken by Raghubir Tiwari and further that any objection was filed by him against Raghubir Tiwari on payment of compensation. My attention was drawn towards the fact that in para 16 of PW 6, it is admitted that all the appellants were known to him since he attained the Hosh. His evidence is further criticized on the point that though he claimed to be confined in a room, he has narrated the incidence as eye-witness and the fact is that he remained in the house right after the occurrence till morning but he could not give details of the property looted by the dacoits, vide par 23.

7. In the same context, my attention was drawn towards the statement of PW 8, wife of the informant along with the statement of PW 7, Girindra Kumar Pandey, own brother of the informant. PW 7 has admitted, vide para 3 of the cross examination that he has purchased the lands of village Hurmur and grandfather of the appellants has also purchased the land of the same Mauja. He admits that there was a dispute regarding receiving of compensation amount. According to him, he has stated before the police that dacoity has been committed but he could not give the details what was looted away. PW 8, the wife, gave the description of assault on her husband and, thereafter, the dacoits entered in the house and looted household ornaments etc. after breaking open the door. She asserted that she was seeing the whole occurrence after concealing her in the house of Mangal Tiwari. She admitted in para 5 that Chandranath Pandey was her father-in-law and Deonath Pandey was grand-father-in-law. She could not say why the assault has taken place and according to her version, she has informed the informant and gave the details what items were looted away. She stands contradicted by her husband, who did not inform the police and stated that his wife may give the details of the properly looted away. She asserted that she was watching the entire occurrence concealing herself on the door of Mangal Tiwari, vide para 10. She further asserts that while the villagers assembled she went in the house and thereafter her husband was brought from the house of Chhedha Bhuiyan.

8. PW 1, Saroj Kumari, daughter of informant and PW 9, Bhabhi of the informant and wife of Girindra Pandey, have supported the prosecution story but admitted in cross examination that similar allegations against the appellants were made regarding the dacoity committed in the house of Girindra Pandey at Hazaribgh in the year 1981, PW 2 and 3 have been tendered by the prosecution. PW 10 is S.I., who has submitted charge sheet. PW 11 is the I.O of this case. Medical Officer has not been examined to prove the report, which is available on record showing that multiple injury, abrasion, swelling etc. were found on the body of the informant. The I.O. has admitted in his cross examination that during investigation he visited the P.O. and he found a country made pistol, Bhujali and Moflar etc. from the Gohal of the informant. He has prepared the seizure list (Ext 2) and examined the witnesses on the spot. He further admitted in para 13 that he has not examined any independent witness of the village. According to him, vide para 14, he did not find any sign of damage in the house of the informant and nothing could be recovered from the house of the appellants, vide para 16 of his cross-examination. He further contradicts PW 1 and 6, vide para 17, 18, 19 and 20 of his cross examination, to have not given the details of the property looted away.

9. Learned Counsel for the appellant drew my attention towards the defence taken by the appellants and production of documents to prove that litigation was going on between the informant and the appellants since before the occurrence. The learned Counsel further submitted that observation of the learned lower court, vide para 25 of the impugned judgment, shows that Ext.A to D failed to establish that the appellants have been on inimical terms with the informant due to land dispute. Although the learned court himself has discussed these documents, vide para 9 of his judgment taking notice of the ordersheet of the Anchal Adhikari, Simaria, from 8.12.1981 to 19.10.1985 in mutation case of the lands of village Murmur and as such the entire prosecution story deserves to be disbelieved and the order of conviction of the appellants is to be set aside.

10. The learned APP opposed this contention on the ground that eye witnesses of the occurrence have supported the story of assault on the informant supported by medical examination of the informant in the morning of 19.3.1982. It is further submitted that the learned lower court has accepted the evidence of eye witnesses and rightly convicted the appellants for the offence u/s 395 IPC.

11. I have carefully gone through the evidence available on records and the arguments advanced on behalf of the appellants. In this case the informant knew the appellants and alleged that he knew some miscreants, who committed dacoity in his house just at the time of sunset on 18th March, 1982. According to the informant, the appellants have concealed their faces and started assaulting on him. He ran to safety in the house of Chhedi Bhuiyan, where he was concealed by the house inmates. However, in the meantime the appellants along with others entered in his house and after breaking the door, looted the ornaments and household articles, which was seen by the house inmates-PWs 1,

7, 8 and 9. The entire prosecution story depends upon the evidences of these four eye witnesses. The informant has initially denied that any dispute regarding land was going on between the family of the informant and the appellants. However in his cross examination he admitted that a land dispute regarding considerable areas of land of village Hurmur was going on between the prosecution party and the defence party, for which evidences have been brought on record by the defence, vide Exts.A to D. It is also admitted fact on record that a similar case of dacoity was lodged by PW 7 Girindra Pandey against the appellants said to be committed in his house at Hazaribagh. The prosecution version suffers from lack of credibility because even if the appellants have participated in the dacoity, they could not come bare faced openly in the village, where everyone knew them by face. Further more if valuables were looted away by the dacoits, the informant being given the details by his wife PW 8, what prevented him to disclose the details to the police when FIR was lodged in the morning of 19th March, 1982.

12. As such it is apparent that the informant is concealing material facts just to implicate the appellants in this case. The cross examination of witnesses and admission of I.O. that he did not find any mark of violence, broken door etc. in the house of the informant just in the morning of 19th March, 1982 further creates reasonable doubts in the prosecution version. The conduct of PWs 1, 4, 7, 8 and 9, who all asserted to be present during the occurrence but not assaulted, also creates reasonable doubts in the prosecution version. According to the informant, he was given his licencee gun after he came out of the confinement but he and his brother, PW 7, did not try to protest even he was having a gun. The alleged recovery of country made pistol and other articles left by the assailants do not tally with the prosecution case. In view of the long standing land dispute between the prosecution party and the appellants, the whole story appears to be improbable particularly when appellants went to commit dacoity unconcealing their identity in the evening and assaulted the informant and after which dacoity was committed. The I.O. has admitted that he could not find any mark of violence, broken door etc. and in view of the belated description of the looted articles, I find and hold that the appellants are entitled to the benefits of doubts.

13. In view of the findings arrived at in foregoing para, I hold that the prosecution story could not be proved beyond reasonable doubts. It is also found that the trial of the appellants Ajay Tiwary and Bijay Tiwary along with others stands vitiated. As such, I find and hold that the impugned judgment and conviction of sentence of the appellants cannot be sustained.

14. In the result, the present appeal has got merit in it and is, accordingly, allowed and the appellants stand acquitted from the charges levelled against them. Since the appellants are on bail, they are discharged from the liability of bail bonds.