
(2012) 10 PAT CK 0030

In the Patna High Court

Case No : Criminal Appeal (SJ) No. 182 of 2000

Raj Kumar Das

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 04-10-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 392

Citation : (2012) 10 PAT CK 0030

Hon'ble Judges : Sheema Ali Khan, J

Bench : Single Bench

Advocate : Sandeep Kumar and Mr. Mukesh, for the Appellant; Sujit Kumar Singh, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Sheema Ali Khan, J.—The appellants have been held guilty for the offences u/s 392 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for 7 years by the Additional Sessions Judge-VI, Begusarai in Sessions Trial No. 188 of 1995/147 of 1998. The points to be considered in these two appeals is whether the identification of two witnesses by PWs 2 and 3 can be relied upon for the purposes of upholding the conviction against the appellants.

2. The occurrence is said to have taken place on 15.09.1994 for which a First Information Report was instituted on 16.09.1994 alleging therein that the informant had gone to visit his friend Indradeo Singh in the Railway Colony at Barauni. After meeting his friend, when he opened the door of his Van to come back to his house, four young men surrounded him, one of them pushed him away and thereafter they all of them drove away with the Maruti Van. The informant called his friend and both of them went on a motorcycle to chase the Van and tried to recover it.

3. In this case, five witnesses have been examined on behalf of the prosecution. The conviction is based on the Test Identification Parade (Exhibit-2). It is said

that PW 2 Pitambar Mishra is said to have identified the appellant Raj Kumar Das, whereas PW 3 Sunil Kumar Choudhary, the informant, is said to have identified the appellant Gajanand Tiwary.

4. PW 1 Indradeo Singh is the friend of PW 3 Sunil Kumar Choudhary, the informant. He supports the case inasmuch as he has stated that he had accompanied the informant for the purposes of trying to recover the Van, which had been stolen.

5. PW 2 Pitambar Mishra is also the friend of PW 3 Sunil Kumar Choudhary, the informant. He claims to have seen the Maruti Van while he was crossing the Railway Colony.

6. PW 4 Uma Shankar Singh has stated that he came to know about the occurrence after about 4-5 days after it had taken place.

Therefore, the evidence of P.Ws. 1, 2 and 4 is limited to the extent of stating that a dacoity took place in which the miscreants stole the informant's Maruti Van.

7. This Court has to examine the evidence of P.Ws. 2 and 3 who are said to have identified the appellants.

8. PW 3 Sunil Kumar Choudhary is the informant of the case. He gives an explanation for the delay in lodging of the First Information Report by stating that he had chased the Maruti Van and while doing so, he went up to Munger but he could not trace his Van, and as such, he has lodged the First Information Report on the next day as it got very late by the time he returned to Barauni. Counsel for the appellants points out that the lengthy explanation given in the Court has not been mentioned in the First Information Report and as such, the explanation is an after thought. According to this Court, this fact is not very relevant as it cannot be denied that the Maruti Van was stolen and that it was subsequently recovered. Regarding the identification, attention of the Court has been drawn to the statement of PW 3 when he admits that he went to the Police Station on 20th September, 1994 to get his Maruti Van released. He has stated that he was at the Police Station for about half an hour, but denies that he had seen the persons who were caught with the Maruti Van and were in the Police Station Hajat. For the purposes of establishing that the Maruti Van was seized from Munger, the case diary has been exhibited in this case. Counsel for the appellants points out that the case diary has been proved by an Advocate Clerk, which is not a valid prove of the case diary as the Advocate Clerk has no special knowledge and association with the Investigating Officer who prepared the case diary and, therefore, he cannot be in a position to identify the handwriting of the Investigating Officer. Nevertheless, the Trial Court could have looked into the case diary for the purposes of aiding the Court to come to a conclusion regarding the manner in which the Maruti Van was seized. this Court finds no difficulty in taking cognizance of the fact that the Maruti Van was recovered and later released in favour of the informant. Nevertheless, since the appellant Gajanand Tiwary has been identified in the Test Identification Parade by the informant, the

Court has to examine whether this aspect of the matter can be relied upon.

9. Considering the entire evidence, specially the fact that the informant had the opportunity at the Police Station to see the accused persons. Certain doubts are raised regarding the fact that he had an opportunity to see the accused persons who were caught with the Maruti Van, and as such, this Court cannot rely on the sole identification of the informant, PW 3.

10. Regarding the appellant Raj Kumar Das, Counsel for the appellants argues that he has almost completed the sentence as he had remained in custody for four years ten months. It is also submitted that PW 2 claims that he was informed regarding the recovery of the Maruti Van by PW 3, the informant. The informant also disclosed that the persons responsible for the theft of the Maruti Van have been caught and are in Police custody. He further states that the informant specifically stated that "UN TINO KE BARE ME KUCH AAUR BATAIN", thereby indicating that the informant had disclosed certain facts regarding the accused persons who were caught by the Police at the time of recovery of the Maruti Van.

11. Considering this aspect of the matter, this Court finds that the evidence of PW 2 discloses that he had some knowledge about the persons who were caught at the time of recovery, and as such, the identification by this witness in this case does not inspire the confidence of this Court.

12. Considering the facts aforesaid, this Court acquits the appellants giving them the benefit of doubt. The appellants are also discharged from the liabilities of the bail bonds furnished earlier in this case; In the result, these two appeals are allowed.