
(2008) 02 PAT CK 0135
In the Patna High Court

Rajendra Singh and Others etc.

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 21-02-2008

Acts Referred:

Penal Code, 1860 (IPC) — Section 395

Citation : (2008) CriLJ 2401

Hon'ble Judges : Shyam Kishore Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Shyam Kishore Sharma, J.—All the above noted appeals have arisen out of one common judgment as such they have been heard together and are being disposed by this common judgment.

2. The appellants have preferred these appeals against the judgment of conviction and order of sentence dated 17-7-1993 and 19-7-1993 respectively passed by the 2nd Additional Sessions Judge, Jamui in Sessions Case No. 177 of 1992 whereby they have been found guilty for committing offence u/s 395 of the Indian Penal Code and were sentenced to undergo R.I. for 8 years.

3. According to the prosecution case, a dacoity was committed at mid night at about 00.20 a.m. at Gidhour Railway Station. The information was given by the Nand Kishore Singh, Station Master of that Station. Nand Kishore Singh in his fardbeyan which was recorded at 1.20 a.m. at Gidhaur Railway Station alleged that while the informant was working on the roll of Station Master and was in the process of handing over the charge of duty to Station Superintendent Sadanand Pandey then 15-16 criminals came and encircled the informant. They started assaulting by fist and slaps and one wooden Bhujali. They pointed out one pipe gun and key of the counter was snatched and the accused persons took away Rs. 471/-. One of the criminals caught Sadanand Pandey and on the point of revolver they got the safe opened and deposit of four days transaction of the station that

was Rs. 16,165/- was taken away. Two Constables Binay Kumar Singh (P.W. 2) and Ram Bhawan Yadav (P.W. 3) who were on duty were also encircled and they were locked inside the chamber of Station Superintendent. One Constable Binay Kumar Singh (P.W. 2) was robbed of his HMT Kajal writ watch. One umbrella of K. C. Pal Brand and torch of three battery were robbed. One potter was sitting outside was encircled and his HMT watch of Rs. 52/- was taken away. One Sita Ram Gosai who was sitting there with his wife, daughter and son was robbed of Rs. 515/-. Kalawati Devi wife of Sita Ram Gosai was also robbed of her silver chain, silver bala and payal. After giving fardbeyan Nand Kishore Singh (P.W. 2) has put his signature (Ext. 1) which was signed by Sadanand Pandey (Ext-1/1) and Dhananjay Singh (Ext-1/2). Formal FIR (Ext-5) was registered against 15-16 unknown persons for committing dacoity of worth Rs. 17,128/-. After investigation charge-sheet was submitted. Cognizance was taken and the case was committed to the Court of Session.

4. Charge u/s 395, I.P.C. was explained to the accused persons on which they pleaded their innocence and preferred to be tried.

5. In order to prove the case the prosecution has examined altogether 7 witnesses. They are P.W. 1 Nand Kishore Singh Station Master the informant, P.W. 2 Binay Kumar Singh Constable, P.W. 3 Ram Bhawan Yadav Constable, P.W. 4 Makardhwaj Singh the Judicial Magistrate, P.W. 5 Ram Narain Singh the Judicial Magistrate, P.W. 6 Raj Kumar Singh a formal witness and P.W. 7 Fakira Yadav is also a formal witness.

6. The informant is P.W. 1. He has been examined to say that a dacoity was committed at Gidhour Railway Station where he was posted. He has stated that in the night of 10/11-8-1991 Just after mid night while he was handing over the charge of duty to Station Superintendent Sadanand Pandey then several persons came. One of them was armed with revolver, The revolver was pointed on his chest. The criminals demanded key, due to fear P.W. 1 handed over the key and thereafter, cash of Rs. 471/- was taken which was the sale proceed of the tickets. The dacoits also forcibly snatched the key of iron chest but they could not succeed in opening the chest so they got the chest opened by giving threat to Sadanand Pandey. After the chest was opened the dacoit took up Rs. 16,361/- which was the sale proceed of tickets of altogether four days. The Constables who were present locked inside the chamber. Porter Deoki Paswan and other persons were encircled by the dacoits at the time of robbing. The dacoits took away the lantern before departing. The dacoits disconnect the communication by cutting the telephone line and threw away the lantern on the railway line. Tills witness has been examined to prove that a dacoity was committed. From the trend of cross-examination also the factum of dacoity has ever been disbelieved. Nothing was asked by P.W. 1 to disconnect his evidence that a dacoity was committed. So this witness has remained intact and proved that a dacoity was committed at the Gidhour Railway Station in the mid night.

7. On this point, evidence of P.Ws. 2 and 3 has also been brought on the record.

Both the witnesses were posted as Constables at the Gidhour Railway Station, they were on their duty. They have stated that the dacoits came and surrounded them and took away certain articles and some cash. Thereafter, the dacoits escaped. Passengers were also looted. They have also been cross-examined but on the trend of cross-examination it appears that no suggestion was given to them that no such dacoity was committed. It appears that the factum of dacoity has not been challenged and the prosecution has been able to prove that the dacoity was committed in the night of 10/11-8-1991 at the Gidhour Railway Station.

8. Now the prosecution has required to prove as to whether these appellants have participated in the offence or not.

9. Two material witnesses have been brought by the prosecution in support of its case that these appellants have committed dacoity. P.W. 2 is the Constable who was on duty on the date and time of occurrence. He in his evidence has stated that the lantern was giving light but it was thrown on the railway track. This witness has claimed to identify the dacoits in the light of lantern. P.W. 3 is another Constable who was posted in the official capacity of Constable at the Gidhour Railway Station during the night of dacoity and he in his evidence has stated that he saw 8-10 persons coming and they encircled him and at that time the lantern was giving light. He stated that he and P.W. 2 were locked inside the room but he claimed that he could identify the accused persons as he has seen the criminals in the light of lantern.

10. The case of the prosecution regarding availability of light by lantern has not been challenged as no such cross-examination has been made from which it can be inferred that at any point of time the defence also tried to put even a suggestion that the lantern was burning or not. Therefore, identification of the accused in the light of lantern is not challenged.

11. Learned Counsel for the appellants submitted that the lantern was not produced in the Court nor the I.O. was examined though it was the material and vital evidence. Evidence of P.W. 1 is also that the dacoits before leaving the station threw the lantern outside. Therefore, the evidence is consistent that at the time of occurrence lantern was giving light.

12. With regard to Identification there are evidence of P.Ws. 2 and 3 who have claimed to identify the dacoits in the light of lantern. The identification was done in presence of P.Ws. 4 and 5. The evidence of P.Ws. 2 and 3 is that they went for Test Identification Parade which was conducted at Jamui Jail, and they have identified the dacoits. P.W. 2 has identified the dacoits. He has stated that he has seen those persons committing dacoity at the Gidhour Railway Station. P.W. 3 has also stated that he participated in the Test Identification Parade and he has identified Janki Yadav, Janardan Yadav, Mital Yadav alias Manoj Yadav by face. For providing Test Identification chart the prosecution has examined P.W. 4 who has stated that on 16-9-1991 the A.C.J.M., Jamu has directed him to go Jamui

Jail for conducting T.I.P. Accordingly, he went Jamui Jail and conducted T.I.P. and thereafter, a chart was prepared (Ext. 2). Another Judicial Magistrate P.W. 5 has stated that on 1-10-1991 he went to Jamui Jail on the order of the A.C.J.M., Jamui and got the T.I.P. of Suresh Sah and others conducted. After T.I.P. the chart (Ext. 3) was prepared. Therefore, two T.I. charts are on the record which are Exts. 2 and 3. Bare perusal of the Exts. 2 and 3 go to show that Suresh Sah and Maruan Sah were identified on 16-9-1991 by P.Ws. 2 and 3. P.W. 2 has identified Suresh Sah, Maruan Sah whereas Suresh Sah, Maruan Rawat, Janki Yadav, Mattal alias Manoj, Rajendra Singh and Janardan Yadav were identified by P.Ws. 2 and 3 which is apparent from Exts. 2 and 3. Therefore, identification of the appellants at Test Identification Parade has been proved not only by the witnesses who have participated in the T.I.P. rather by the Judicial Magistrate in whose presence the T.I.P. was conducted.

13. Learned Counsel for the appellants submitted that the identification of the appellants in T.I.P. is not convincing because the witnesses have opportunity to see the appellants from before as they were locked at the G.R.P. Station where those witnesses were posted. Therefore, there was every opportunity that the accused persons were shown to the witnesses prior to their identification of the T.I.P.

14. Evidence of P.Ws. 2 and 3 show that they have gone for Test Identification Parade. There is no any petition on the record by any of the appellants as to whether they have put before the witnesses before the T.I.P. They were produced before the Court and they have never raised this fact before the Presiding Officer at the time of their productions on various dates. This defence was taken for the first time at the stage of argument. Therefore, it is a merely academic argument and the appellants were not entitled to get benefit of such belated argument.

15. There are overwhelming evidence on the record that the appellants have participated in the dacoity at the Gidhour Railway Station on the date and time of occurrence. The prosecution has been able to prove its charge against all the appellants. In my view the impugned judgment of conviction and sentence is correct.

16. It has been submitted by the counsel for the appellants that the appellants were the first offenders and no previous conviction was brought on the record and they have remained in custody since more than three years. The occurrence is of about 17 years earlier so their sentence may be modified for the ends of justice.

17. Considering the facts and circumstances and the argument of the learned Counsel for the appellants, I am of the view that the sentence awarded to the appellants should be modified. Accordingly, the sentence of appellants is modified to the extent that the period undergone in custody by them during trial and appeal shall be deemed to be sufficient for the ends of justice. Accordingly, these appeals are dismissed with the modification in sentence.