

(2011) 09 PAT CK 0070

In the Patna High Court

Case No : Criminal Appeal (SJ) No. 354 of 1998

Ram Janam Singh, Brij Kumar Singh and Sanjay Singh

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 06-09-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 395

Citation : (2011) 09 PAT CK 0070

Hon'ble Judges : Gopal Prasad, J

Bench : Single Bench

Final Decision : Allowed

Judgement

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

2. The Appellants have been convicted u/s 395 of the Penal Code and sentenced to undergo rigorous imprisonment for ten years.

3. The prosecution case, as alleged in the fardbeyan by the informant that in between the night of 15-16 August, 1986 at about 01.30 a.m. while the informant was sleeping in verandah and his father and nephew were also sleeping there, 4-5 persons came and surrounded variously armed entered into the house threatened the female inmates and looted away the boxes and the informant identified the accused persons in the light of the torch flashed by the dacoits and he claimed to have identified Ajay Singh, Ram Janam Singh, Brij Kumar Singh, Sanjay Singh and Dinesh Singh on the basis of torch light as well as on the basis of voice. It has, further, been stated that some the dacoits were covering their faces and besides the informant, his nephew, Gopi Nath Tiwary, also identified the dacoits. On the fardbeyan the first information report lodged and after the investigation the charge sheet submitted, cognizance taken and the case committed to the Court of sessions.

4. After commitment, charge framed and eleven witnesses were examined out of which P. Ws. 1 and 2 are the formal witnesses, who have formally proved

Exhibits 1 and 2. P.W. 3, Gobardhan Nath Tiwary, claimed to have identified six accused persons and claimed to have identified the accused persons in the light of torch lit by the dacoits. P.W. 4, Suga Kunwar, the mother of the informant, aged 90 years, but, also claimed to identify the dacoits in the light of the torch lit by the dacoits. P.W. 5, Chandrakanti Devi, the daughter of P.W. 4, also claimed to identify the accused persons, including the Appellants, and also claimed to have identified in the light of torch lit by the dacoits. P.W. 6 is the daughter-in-law of P.W. 4, also claimed to identify the accused persons, including the Appellants, in the light of torch lit by the Appellants. P.W. 7 also claimed to identify the accused persons in the light of torch. P.W. 8, Gopi Nath Tiwary, the nephew of the informant also claimed to identify the accused persons, including the Appellants. P.W. 9 is the informant and the son of P.W. 4 also claimed to identify the accused persons, including the dacoits, in the light of torch, which was list by the accused persons. P.W. 10 is the doctor, who has proved injury, which is simply superficial in nature. P.W. 11 is the investigating officer. He has not mentioned any objective finding of the dacoity, however, stated that he found three boxes. However, he stated that during the investigation he did not enquire from the persons living in and around and in the neighbour of the informant. The occurrence took place in the night and the first information report was lodged at 08.00 a.m. on the next day.

5. The defence has also adduced witnesses, who are D. Ws. 1, 2, 3 and 4 and the case of the defence is that they have been falsely implicated.

6. The trial Court, after considering the evidence, convicted the Appellants, as stated above.

7. The learned Counsel for the Appellants, appearing as *amicus curiae*, however, contended that the occurrence is in the mid nigh and there is evidence that the night was dark and cloudy and there is no means of identification except the torch light, lit by the dacoits and it is difficult to identify six persons at a time in the torch light of dacoits. The accused persons are inimical and the false implication can not be ruled out and the witnesses, who support the prosecution case, are only the family members of the informant and not even the single independent witness came to support the prosecution case, no alarm was raised and none of the co-villagers said to have turned up at the place of occurrence at the time of dacoity, hence, the prosecution case is not believable and order of conviction and sentence is not sustainable.

8. The learned Counsel for the State, however, contends that the witnesses have supported the prosecution case and having named the accused persons, including the dacoits.

9. However, prosecution case, as alleged in the fardbeyan that in the night the informant was sleeping in verandah and his father and nephew were also sleeping there, accused persons came and then he claims to have identified the accused persons in the light of torch as well as by the voice and it has been

claimed that his nephew also identified. However, there is no mention in the first information report that other inmates of the house also identified accused persons or not. P. Ws. 4 and 9 have accepted in their evidence that there is enmity between the Appellants and the informant. It has also come in the evidence of P.W. 4 that it was a dark and cloudy night. However, P. Ws. 4 and 9 are all the family members who are the mother, brother, sister and nephew of the informant, no person of the village have come to support the prosecution case either about the dacoity or evidence that the accused persons were identified by their voice and all the witnesses, from P. Ws. 4 to 9, have deposed in a parrot like statement that they identified the Appellants in the light of torch, lit by the dacoits. However, they have not mentioned that when they identified the accused persons what act of omission or commission was being done by the dacoits and, further, though the informant has stated that some persons have covered their faces, however, admittedly, the Appellants are the co-villagers and there is no enmity and, hence, it can not be presumed that the Appellants will come to commit dacoity with their having not opened.

10. Hence, having regard to the fact that the identification made in the torch light, lit by the Appellants is very weak evidence and no reliance can be placed on the identification of the dacoits in the light of torch, lit by the dacoits. Though it is claimed in the fardbeyan that they identified by voice, however, no evidence has been led that the Appellants were identified by the informant. However, in the fardbeyan there is mention that it is only the informant and his nephew have identified, but, during the trial all the family became the eye witnesses and claimed to have identified, which, itself, indicates that there is development in the prosecution case and, further, since none of the neighbours or persons of the village have come to support the prosecution case and the investigating officer has also not mentioned any objective finding regarding the dacoity in the house of the informant.

11. Hence, having regard to the facts and circumstances, the Appellants are entitled to the benefit of doubt and I extend the Appellants the benefit of doubt and hold that the prosecution has not been able to prove the charges levelled against the accused persons beyond reasonable doubts.

12. The order of conviction and sentenced, recorded by the trial Court, is hereby set aside the appeal is allowed.