
(2002) 09 PAT CK 0119
In the Patna High Court
Case No : Criminal Appeal No. 410 of 2001

Ram Jatna Beldar @ Ram Jatan Beldar and Others	APPELLANT
Vs	
The State of Bihar	RESPONDENT

Date of Decision : 19-09-2002

Acts Referred:

Penal Code, 1860 (IPC) — Section 395

Citation : (2002) 4 PLJR 704

Hon'ble Judges : S.N. Pathak, J

Bench : Single Bench

Advocate : Arun Kumar Tripathi, Amicus Curiae, for the Appellant; Ali Mozaffar, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Pathak, J.—Both the appeals which arise out of the same judgment have been heard together and are being disposed of by this common judgment.

2. These appeals are directed against the judgment dated 14.9.2001, passed by the 1st Additional Sessions Judge, Nalanda in Sessions Trial No. 301 of 1999. All the Appellants were convicted for the offence u/s 395 of the Indian Penal Code and they were sentenced to undergo rigorous imprisonment for six years.

3. The prosecution case, as contained in the fard beyan of the informant (P.W. 5), was to the effect that in the night between 16-17 December, 1998, at about 12.30 A.M. several dacoits entered inside the house after scaling over the roof of the house and committed loot and plunder at the point of fire arms. The informant identified some of the desperadoes by names and by face, and other dacoits of village Gauribigha were known to the informant by their faces, but he did not know their names, subsequently T.I. Parade was held in which the inmates of the informant's house had identified the other dacoits who were not named in the fard beyan (Ext. 1.).

4. Six witnesses were examined during the course of trial out of whom P.W. 6

was T.I. Magistrate and the rest of the P. Ws. were so called eye witnesses to the alleged occurrence. One of the witnesses namely P.W. 3 Saida Khatoon was declared hostile by the prosecution because she had failed to identify any of the dacoits. Rest of the P. Ws. supported the alleged occurrence of dacoity in their house and they also named some of the culprits and others were claimed to be identified, if confronted. P.W. 6 who was the T.I. Magistrate deposed that he went to the jail premises at Hilsa to hold T.I. Parade and in the T.I. Parade witnesses identified Ram Jatan Beldar, Ram Peyare Beldar, Janak Beldar, Arun Beldar and Munarik Beldar.

5. Mr. Arun Kumar Tripathy, advocate was appointed amicus curiae to argue on behalf of the Appellants in both the appeals. He submitted that in this case only interested witnesses were examined who were all family members of the victim-house and though independent witnesses of village had come to the place of occurrence after the alleged dacoity, none was examined. Moreover, there are discrepancies in the evidence of P. Ws. inter-se belying the alleged occurrence. T.I. Parade was not conducted properly in accordance with the provisions of law, in so far as all the witnesses were standing at the same place and T.I. Magistrate did not observe all the rules relating to the holding of a fair T.I. Parade. On the aforesaid grounds the order of conviction and sentence has been assailed.

6. So far the interestedness of witnesses is concerned, I am of the opinion that in cases of dacoity committed specially at the dead of night when the criminals used force, chance of independent witnesses coming to the place of occurrence is normally ruled out. The witnesses arrived at the place of occurrence after the alleged occurrence was over, and when the dacoits had already decamped so there was no question of any independent witness coming to support the fact that he had seen the dacoits committing the alleged dacoity and that he had identified them. In this view of the matter non-examination of any independent witness did not fatally affect the prosecution case. So far the discrepancies are concerned, the alleged discrepancies have been discussed in the judgment of the trial Court and they are not so material as to belie the alleged occurrence of dacoity in the house of the informant. Even the hostile witness supported the occurrence of dacoity although she had failed to identify or name the dacoits. So far the criticism regarding the T.I. Parade, P.W. 6 had denied that all the witnesses were standing at the same place and that they had seen the culprits at one go and at the same time. He has further denied that he had failed to observe the norms and rules attaching to the holding of T.I. Parade. No specific violation of the T.I.P. Rules has either been mentioned in the Memo of appeal nor the same has been pointed out. The criticism that since the accused Appellants were known to the informant from before and that there was bad blood between the informant on the one hand and the accused Appellants, on the other, I am of the opinion that the enmity cuts both ways and the estranged relationship between the informant and the accused-Appellants on account of non-payment of wages or on account of digging of well by the side of the informant's house may also give a motive to the accused Appellants for committing the alleged occurrence. If

it could be a motive to the informant for false implication if and the informant were to implicate the accused Appellants on account of enmity, he could implicate all the accused persons by their names. So it appears that the informant was candid in naming only three persons in the F.I.R., although he claimed to have identified others and that is why the T.I.P. was held where the other accused-Appellants were identified.

7. In view of the aforesaid discussions upon the evidence on record, I do not think that the trial Court recorded an order of conviction not warranted by the evidence on record. In the result, I am of the opinion that the order of conviction and sentence does not call for any interference by this Court. Accordingly both the appeals are dismissed. The Appellants of both the appeals shall surrender in the Court below and serve the sentences awarded against them.