
(2002) 02 PAT CK 0077

In the Patna High Court

Case No : Criminal Appeal No. 25 of 1991 (SJ.)

Ranglal Paswan and Musa Paswan

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 26-02-2002

Acts Referred:

Penal Code, 1860 (IPC) — Section 392

Citation : (2002) 4 PLJR 731

Hon'ble Judges : I.P. Singh, J

Bench : Single Bench

Advocate : Yogendra Prasad Sinha, Nirmal Kumar Sinha and Rakesh Ambastha, for the Appellant; Ashwini Kumar Sinha, for the Respondent

Final Decision : Allowed

Judgement

I .P. Singh, J.—Both the Appellants have been convicted u/s 392 of the Indian Penal Code and have been sentenced to undergo rigorous imprisonment for 4 years each.

2. The prosecution case, in brief, is that on 17.11.1988 while the informant Vijay Kumar Sinha was returning to his Village on a motor cycle after closing his medicine shop situated in Hathouri market he was intercepted by two persons on the road passing through the Chaur of Village-Sahilawali. It has been further alleged that immediately thereafter two other persons came there and pointed out their country made pistols on him and directed him to surrender all his money. One of them took out Rs. 728/- from his pocket. In the meantime, five persons were seen rushing from the side of the village towards the place of occurrence raising alarm of dacoity. Seeing them the dacoits fled away towards the east north direction. It has been further alleged that as it was a moonlit night so the informant could see the faces of the dacoit clearly. When the villagers reached at the place of occurrence the informant learn from them that at the same time the same gang of dacoits had plundered Ram Chandra Singh, Ganga Singh and Jal Nandan Rai also whom they had made to sit in a field after

commission of crime with them. He also learnt from those persons that the dacoits were five in number. It has been further learnt that Ajay Kumar Singh and Dhrub Kumar Singh of Village Asm were also robbed on that date. Thereafter the fardbeyan of the informant was re-recorded at 8 P.M. on the same day at Village-Sahilawali and on the basis of the aforesaid fardbeyan a formal F.I.R. was drawn up against unknown persons. In course of the investigation two accused persons were apprehended on the basis of the information about their complicity in the crime and were put on T.I.P. Parade where they were identified by the victims. (sic) completion of the investigation the police submitted charge sheet. Accordingly the cognizance was taken and finally the (sic) concluded with the result as (sic) above. Hence this appeal.

3. The Appellants pleaded not (sic) and have stated that they have been (sic) implicated in this case.

4. The prosecution in order to prove its case has examined all together 14 (sic) nesses out of whom P.W. 14, Kamla (sic) Singh, is a formal witness. P.Ws. 4, Gaj(sic) Bind and P.W. 5 Jagarnath Bind have been declared hostile. P.W. 1, Binay Kumar (sic) is the informant of this case. P.W. 2, (sic) Prasad Rai, is a hearsay witness. (sic) Ashok Kumar Chaturbedi, is a (sic) Magistrate who has conducted the (sic) the suspects. P.W. 6 is Jai Nandan (sic) 7 is Ram Swarath Singh P.W. 8, Laksh(sic) Singh, has been tendered. P.W. 9, Lal Singh, has been declared tenderr (sic) Jinish Rai is a hearsay witness. P.W. 11 Babu Singh, has been tendered. P.W. 12 is Ganga Singh. P.W. 18 is Ram Chandra Rai..

5. The defence has also examined alone witness Kishori Sahni (D.W. 1).

6. P.W.1 the informant has fully supported the case of the prosecution. According to him on 17.11.1988 while the informant was returning to his Village on a Motor cycle he was intercepted by two persons on the road. He has further stated that immediately thereafter two other persons searched there and pointed out their country made pistols on him and directed him to surrender all his money. According to him one of them took out Rs. 728 from his pocket. He has further stated that when the villagers came there the dacoits fled away towards north east direction. He also learnt from the villagers that about same time the same gang committed offence in the house (sic) Ram Chandra Singh, Ganga Singh and sai Nandan Rai. He also learnt that Ajay kumar Singh and Dhrub Kumar Singh of village Asma were also robbed on that date.

7. P.W. 12 has also supported the version of P.W. 1. He has stated that he was going to attend the call of nature and he was intercepted by the dacoits on road. According to him one of them slapped him and the rest pointed out their pistol and dagger on him. He has further stated that the dacoits took out in all Rs. 125/- from his lockets. He has further stated that after that (sic) forced him to sit in a ditch by the side of the road where he found Ram Chandra Rai also in similar situation. P.Ws. 6 and 13 have also supported the case of the prosecution and version of the informant (P.W. 1).

8. P.W. 3 is a Judicial Magistrate who has conducted T.I.P. of the suspects in which Appellant Ranglal Paswan has been defined by Ganga Singh and Appellant Musha Paswan has been identified by witless Ram Chandra Singh. Thereafter he prepared a T.I. Chart and also took the signature of the witnesses.

9. Learned Counsel appearing on behalf of the Appellants has submitted that the Appellants are not named in the F.I.R. and these two Appellants were put on T.I.R which was conducted by the Judicial Magistrate (P.W. 3) and during that T.I.R Appellant, Ranglal Paswan was identified by Ganga Singh (P.W. 12) and Appellant, Musha Paswan, was identified by Ram Chandra Rai (P.W. 13). He has further submitted that the evidence of P.Ws. 12 and 13 are not reliable as they are on inimical terms to the Appellants. He has further submitted that as there is single identification against these Appellants, therefore, the conviction and sentence passed by the court below is not sustainable in the eye of law.

10. From the deposition of the eye witnesses it is obvious that on the date of occurrence i.e. on 17.11.1988 the Appellants were involved in the robbing of the informant as well as Ganga Singh, Ram Chandra Rai, Jai Nandan Rai and others. The eye witnesses have categorically supported the fact as alleged by the prosecution. However, although it was moonlit night but the Appellants were not identified by the informant and as such the F.I.R. was registered against unknown. Thereafter T.I.R was conducted by the Judicial Magistrate (P.W. 3) in which P.W. 12, Ganga Singh identified the Appellant, Ranglal Paswan and P.W. 13, Ram Chandra Rai identified Appellant Musha Paswan. As there is single identification against these two Appellants I am of the view that it will not be safe to convict these Appellants.

11. Accordingly, the Appellants deserve benefit of doubt and they are acquitted of the charge framed against them. The conviction and sentence passed by the court below is set aside and the Appellants are discharged from the liability of their bail bonds.

12. In the result, this appeal is allowed.