
(2005) 03 JH CK 0015

In the Jharkhand High Court

Case No : Criminal Appeal No. 64 of 1992

Saheb Ghosh and Others

APPELLANT

Vs

State of Bihar (Now Jharkhand)

RESPONDENT

Date of Decision : 21-03-2005

Acts Referred:

Penal Code, 1860 (IPC) — Section 395, 412

Citation : (2005) 3 JCR 499

Hon'ble Judges : R.K. Merathia, J

Bench : Single Bench

Advocate : Rajeeva Sharma, Sujata Bhattacharya and K. Purnima, for the Appellant; APP, for the Respondent

Final Decision : Dismissed

Judgement

R.K. Merathia, J.—This appeal arises out of judgment and order dated 21.4.1992 passed by Shri Om Prakash Sinha, Additional Sessions Judge, Pakur (Sahibganj) in Sessions Case No. 243 of 1990, 18 of 1991. The appellants No. 1 and 2 have been convicted u/s 395/412, IPC and appellant No. 3 has been convicted u/s 395, IPC. The appellants have been sentenced to suffer rigorous imprisonment for seven years u/s 395, IPC. Appellants-Gaffar Seikh and Saheb Ghosh have further been sentenced to suffer rigorous imprisonment for seven years u/s 412, IPC. However, the sentences are ordered to run concurrently.

2. The Informant-Tarapada Nag (PW 9) lodged a written report on 29.6.1989 at 10 a.m. about the dacoity in his house in the preceding midnight (28/29.6.1989). It was alleged that he along with his family members was sleeping in his house situated in village Mathara Barmasia. "Dhibri" (Oil lamp) was burning in the rooms. In the midnight, someone dashed on the door by which "Hurka" (wooden bolt) was broken. Four dacoits entered into the house. They caught hold the informant, assaulted him and pointed a "chaku" (knife) towards his neck and asked him for money, ornaments etc. The informant identified one of the dacoits as Birbal Paharia (absconding). The dacoits tied both

hands of the informant and took him to another room, broke the lock and opened the door by "sabol". From this room, the dacoits looted Rs. 9061/- in cash, certain jewellery and utensils. They looted Rs. 1150/-, certain jewellery and clothes etc. from another room. One torch and one umbrella was also looted. One of the informant's brother (PW 10 Chhabi Lal Nag) raised alarm. Some dacoits, who were outside the house, threw bombs but he escaped. In the meantime, one Dharendra Dey (PW 1) shot two arrows towards the dacoits. Dacoits again hurled bombs on him. The villagers started assembling there. The dacoits started fleeing away with looted articles. Several villagers including PWs-1, 3, 4, 6 and 9 chased and caught two dacoits, who disclosed their names as Saheb Ghosh and Gaffar Sk. Certain looted articles were also recovered from their possession. The dacoits confessed before the informant and other villagers about their involvement in the crime along with five other companions namely Jogo Paharia, Biren Paharia, Naresh Santhal and Birbal Paharia.

3. PWs 1, 3, 4 and 6 are the villagers who chased the dacoits along with PW 9 the informant and his two brothers, PW 7 and 10. PW 2 is the Judicial Magistrate who got the test identification parade conducted. PWs-5, 8 and 11 have been tendered by the prosecution. PW 12 is the Investigating Officer (I.O.)

4. Learned counsel for the appellants submitted that in paragraph 14, the I.O. (PW 12) has said that PW 7 did not tell him that dacoits entered into the rooms and tied him and he identified the dacoits in the light of "dhibri".

It appears from para 10 of the case diary that this PW 7, stated before the police about the occurrence of dacoity in short. He has said that the dacoits entered into the house and after tying him, asked for the valuables etc.

5. Learned counsel further submitted that PW 9 (informant) has said in paragraph 18 of his evidence that at the time of test identification parade of appellant No. 3, the persons put on T.I. Parade were not similarly dressed.

The veracity of the test identification parade cannot be doubted, in view of the overwhelming materials in support of the prosecution case. The appellant Nos. 1 and 2 were caught red handed. There are several independent witnesses. Two witnesses identified appellant No. 3.

6. Learned counsel further submitted that PW 1 has said in para 9 that the Investigating Officer came at about 9-10 a.m. whereas the I.O. (PW 12) has said in para 4 that he reached at about 12.30. In my opinion, this is not a vital contradiction.

7. After thorough scrutiny of the materials on record, I find that appellants 1 and 2 were caught on chase by the villagers and the informant party PWs 1, 3, 4, 6, 7, 9 and 10. The looted articles were recovered from appellant 1 and 2, which were given to the police later on, and on that basis a production list was prepared. Appellant No. 3-Biren Paharia @ Biren Rai was identified by the informant-PW 9 and his brother PW 7 as one of the dacoits who tied their hands

by string, and committed dacoity.

8. There is nothing to indicate false implication of the appellants. The witnesses have supported and corroborated the prosecution case fully.

9. In the facts and circumstances of the case, discussed above, I find no reason to interfere with the findings of the trial Court.

10. In the result, this appeal is dismissed. The bail bonds of the appellants are hereby cancelled and they are directed to surrender immediately, failing which the trial Court shall take all steps for their arrest for serving out the sentence.