

(1989) 11 GAU CK 0014
In the Gauhati High Court
Case No : Criminal Revision No. 198 of 1983

Shri Dilip Dhar and Others

APPELLANT

Vs

The State of Assam

RESPONDENT

Date of Decision : 02-11-1989

Acts Referred:

Penal Code, 1860 (IPC) — Section 391, 395, 412

Citation : (1990) 1 GLR 145

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

Bench : Single Bench

Advocate : P.C. Katakya, D.K. Bhattacharjee and S. Ali, for the Appellant; B.P. Bora, for the Respondent

Final Decision : Allowed

Judgement

S.N. Phukan, J.—On the night of 15/16.7.78 at about 3 A.M. 7/8 persons came in a taxi and committed (sic) in the shop houses of Harendra Nath Sharma and Hindu Kumar Deka and took away cash and other goods. Police after investigation submitted charge sheet against 6 persons namely Satyanarayan Sahani, Dilip Dhar, Biren Uria, Gopal Sahani, Jahindar Sahari and Suren Sahani who is an absconder. The learned Assistant Sessions Judge No. 2 Kamrup at Guwahati framed charge against 5 accused persons u/s 395 IPC. Accused Gopal and Jahindar were further charged u/s 412 IPC. All the accused persons pleaded not guilty. Learned trial Court found Satyanarayan Sahani and Dilip Dhar guilty u/s 395 and convicted them accordingly, The learned Assistant Sessions Judge sentenced both accused persons to rigorous imprisonment for 4 years and to pay fine of Rs. 300/- each, Their appeal was dismissed. The present revision petition has been filed only by accused Dilip Dhar. Accused Satyanarayan is not before this Court, Other accused persons were acquitted by the learned trial Court.

2. Heard Mr. Katakya and Mr. D.K. Bhattacharjee, learned Counsel for the Petitioner and Mr. B.P. Bora, learned Public Prosecutor.

3. On perusal of the judgment of the learned trial Court I find that on the same set of evidence both the accused persons were found guilty whereas three other persons have been acquitted. The judgment of the Lower Appellate Court is not helpful as there was no discussions regarding the evidence of the record.

4. Mr. Bhattacharjee has urged that there was no proper identification of the present accused Petitioner by the witness during trial. This is supported by the evidence of the record. It is true that out of three witnesses only one witness identified the accused Petitioner in the test identification parade but in my opinion it would be unsafe to convict the accused Petitioner only on this piece of evidence. I, therefore, find considerable force in the submission of Mr. Bhattacharjee that there was no identification at all of the present accused Petitioner.

5. Mr. Bhattacharjee was urged that the present conviction is not maintainable u/s 395 IPC as out of 5 accused persons, only 2 persons were convicted under the aforesaid section. In this connection Mr. Bhattacharjee has drawn my attention to a decision of the Apex Court in Ram Lakhan Vs. State of U.P.,

6. Section 391 IPC defines dacoity. The first ingredient under this section is that the offence has to be committed by 5 or more persons conjointly. If prosecution cannot prove presence of 5 or more persons in the commission of the offence, Section 391 IPC is not attracted and consequently Section 395 IPC.

In Ram Lakhan (supra) it was alleged that 9 persons participated in the decoity. In appeal High Court convicted only one person. In view of the above circumstances the Apex Court held that the said person cannot be convicted for an offence u/s 395 IPC.

In view of the above law the conviction of the present accused Petitioners namely Dilip Petitioner is illegal.

7. For the reasons stated above I find merit in the present petition and accordingly it is accepted and the impugned judgment is set aside. The accused Petitioner is acquitted of the charge and is also discharged from the liability of the bail bond.

In the result petition is allowed and rule is made absolute.