
(2011) 10 PAT CK 0027

In the Patna High Court

Case No : Criminal Appeal (S.J.) No. 076 of 1997

Sri Bhagwan Koeri @ Sri Bhagwan Prasad

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 13-10-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 395

Citation : (2011) 10 PAT CK 0027

Hon'ble Judges : Gopal Prasad, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Gopal Prasad, J.—Heard Learned Counsel for the Appellant and the State.

2. These three appeals have been heard together and are being disposed off by this common judgment.

3. The prosecution case, as alleged in the fardbeyan of the informant, Baliram Sah, that on 18.05.1980 at 12.15 hours about 15-20 dacoits appeared before his door from the back of river and started broke open the door by tangi (axe) then the informant and his brother and female inmates of the house got up on the roof and started pelting stones on the dacoits. Then the dacoits exploded bomb. The informant claims to identify Rampati Singh Awadhia armed with bomb in bag and Riajuddin in the light of torch, lit by the dacoits and also identified Prahlad Singh and Ramchandra Awadhia. It is further alleged that one Goklanand Tiwary fired and, thereafter, the dacoits fled away.

4. On the fardbeyan, the first information report lodge and after investigation the charge sheet submitted.

5. During the trial fifteen witnesses have been examined, out of them P. Ws. 1 and 2 are the brothers of the informant. They do not claim to identify the Appellants. P. Ws. 3, 4, 5, 6, 7 and 10 have been declared hostile by the

prosecution as not supported the prosecution. P. Ws. 8 and 9 are tender. P.W. 14 is a formal witness. P. Ws. 1, 11 and 12 are the witnesses with regard to the seizure of the fire arm and P.W. 15 is the Sub Judge and he has proved carbon copy of the test identification chart prepared in carbon process in the writing of Shri R.C. Mishra, Judicial Magistrate, Siwan, which has been marked as Exhibit "X" and P.W. 13 is the informant, who identified the three Appellants in Court. He has stated in his evidence that the dacoits started broke open his door then he went on the roof of Rajeshwar and started pelting stones from the roof he identified Rampati Singh Awadhia and Serajuddin amongst the dacoits. He had torch of three cells. He has, further, stated in his evidence that he has participated in Test Identification Parade and has identified Bhagwan Koeri in jail and has stated that all the three Appellants are present in Court and identified them.

6. The trial Court, taking into consideration the evidence of P.W. 13 convicted and sentenced the Appellants, as mentioned above.

7. The Learned Counsel for the Appellants, however, contends that this is a case of single identification and though in the fardbeyan the informant claimed to have identified the Appellants in the light of torch, lit by the dacoits whereas in the evidence in Court claims to have identified the dacoits, but, not stated in which light though stated that he had torch with him and, hence, contends that the identification by P.W. 13 does not inspire confidence to record conviction.

8. The Learned Counsel appearing as amicus curiae also contended that this is a case of single identification.

9. Taking into consideration, the evidence in the light of submissions, as apparent P. Ws. 1 and 2 have supported the prosecution case about the dacoity. In their evidence regarding the dacoity it is only to the effect that they learnt from P.W. 13, however, P.W. 13 is the only witness who claims to have identified the three Appellants. However, the name of the two Appellants, Rampati Singh Awadhia and Sirajuddin finds place in the fardbeyan, itself, and the Appellant, Sri Bhagwan Koeri, has been identified by P.W. 13 in jail in Test Identification Parade. However, the test identification chart has not been proved nor the Judicial Magistrate, who conducted the Test Identification Parade has been examined to prove the test identification chart. P.W. 13 in his cross examination in paragraph 8 have stated that he did not saw that several persons were pelting stones and when he reached there and started pelting stones then he learnt that the dacoits are fleeing away. In answer to a Court question he has stated that when he started pelting stones at that time the dacoits were fleeing away, the night was dark and there was no light and was unable to see the face of any person and when he got down at that time all the persons were fleeing away here and there Hence, from the evidence of this witness in cross examination the probability of identification without a light is very bleak. He has, further, in paragraph 15 stated that he identified the dacoits while they were fleeing away. He has, further, stated that there was land dispute between him and Rafique Mian. He has,

further, stated that the sister of Sirajuddin has been married with Rafique Mian and prior to the occurrence Sirajuddin used to do pairvi on the side of Rafique. He has, further, stated that he has full doubt that Sirajuddin has done the occurrence and he has named Sirajuddin only on the basis of suspicion. Hence, from the evidence of this witness it is apparent that the name of Sirajuddin has been taken in view of the prior enmity and on suspicion. He has, further, stated in his evidence in paragraph 19 that daroga has shown Sri Bhagwan Koeri at the Police Station. Hence, identification of Sri Bhagwan Koeri in the Test Identification Parade lost its significance when this witness admitted that daroga had shown him.

10. Hence, taking into consideration the entire evidence it is apparent that P.W. 13 claimed to identify Rampati Singh Awadhia and Sirajuddin and in his statement in the fardbeyan he has stated to have identified the Appellants in the light of torch, lit by the dacoits. However, in his examination-in-chief he has not stated about the means of identification and in cross examination he has stated that he saw the dacoits while they were fleeing away and at that time there was complete darkness and there was no light and further with regard to the identification of Sri Bhagwan Koeri in jail he has stated that daroga has shown Sri Bhagwan Koeri at the Police Station. Hence, the identification of this witness (P.W. 13), itself, indicates to be doubtful and not reliable. More over, it is a case of single identification and, hence, in view of the evidence of P.W. 13 the identification of the Appellants becomes doubtful to record a conviction u/s 395 of the Penal Code and, hence, I find and hold that prosecution has not proved the charge beyond reasonable doubts under the facts and circumstances the order of conviction and sentence, recorded by the lower Court, against the Appellants, is hereby set aside.

11. The appeals are allowed.