

(2017) 05 AHC CK 0048
In the Allahabad High Court
Case No : 1520 of 2006

State Of U.P.

APPELLANT

Vs

Kanhaiya Tiwari

RESPONDENT

Date of Decision : 08-05-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 161](#) - Examination of witnesses by police
[Indian Penal Code, 1860](#), [Section 396](#) -
Dacoity with murder

Citation : (2017) 05 AHC CK 0048

Hon'ble Judges : Shashi Kant Gupta, Abhai Kumar

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Heard learned A.G.A. for the State appellant/applicant and perused the material on record.
2. This application has been filed by the State appellant/applicant with the prayer that leave to appeal may be granted against the judgement and order dated 30.8.2005, passed in Sessions Trial No. 81 of 1993 (State Vs. Kanhaiya Tiwari and others), arising out of Case Crime No. 135 of 1991, under Section 396 IPC, P.S. Nagra, District-Ballia by the learned Additional Sessions Judge, Fast Track Court No. 2, Ballia, whereby the accused respondents have been acquitted for the offence punishable under the section referred to above.
3. The accused, named in the FIR, were living in the vicinity of the house of the informant and they were having dispute with the informant side over the land adjoining to the house of the informant. The court below has observed that since the parties were having enmity with each other, the false implication of the accused-respondent can not be ruled out. It has come on record that the incident had occurred in the night hours around 12:00 O'clock and there was no sufficient source of light to enable the informant side to identify all the accused

persons. It has also been mentioned that apart from the known accused, five to six unknown persons were also present at the place of occurrence. It has also come on record that the identification parade was conducted after more than three months and no plausible explanation was given in respect thereof. Since, all the accused persons have been identified, as the identification is hundred percent precise, the court has raised suspicion about its authenticity. Neither in the FIR nor in the statements recorded under section 161Cr.P.C. it has been mentioned that the accused persons had smeared their face with black colour, however, in the testimony it was stated that the accused persons blackened their faces in order to avoid their identification. No reason has been given as to why this vital fact was not mentioned in the statement recorded under Section 161 Cr.P.C. and in the FIR. The allegation was made against the accused of looting the valuables from informant's house, however, except one Dhotee (Saree), no recovery whatsoever was made from the possession of the accused-respondent. It is notable that in the FIR, it has been stated that the list of the articles looted from their house would be supplied later on but there was nothing on record to show that the alleged list was ever supplied. The aforesaid saree was also not produced before the Court. PW-5, Baijnath Tiwari, the independent witness, who was said to have reached on the spot at the time of occurrence, has not supported the prosecution story, as such, was declared hostile.

4. We do not find any factual or legal error in the assessment of evidence by the court below while acquitting the accused respondent. Moreover, the view taken by the court below is a possible view. The court below has given cogent, convincing and satisfactory reasons while passing the order of acquittal.

5. We, therefore, do not consider it to be a fit case for grant of leave to appeal to the applicant. The application seeking leave to appeal is, accordingly, rejected and, consequently the appeal is also dismissed.