
(2012) 01 PAT CK 0113

In the Patna High Court

Case No : Criminal Appeal (SJ) No. 171 of 1999

Suraj Mahto @ Suraj Singh and Others

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 19-01-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 395

Citation : (2012) 01 PAT CK 0113

Hon'ble Judges : Mandhata Singh, J

Bench : Single Bench

Judgement

Mandhata Singh, J.—Prosecution case initiated on fardbeyan of one Suraj Singh, in brief, is that on 14.08.1980 at about 11.00 pm. when he was sleeping in his east side room of his house leaving the door open and other family members were sleeping in the courtyard, accused persons came on his roof then in his courtyard. He flashed torch on the miscreants and identified them as his villagers Suraj Mahto, Ganesh Mahto, Jhagru Mahto, Ramjee Mahto @ Saheb Mahto, Sudarshan Mahto, Ramashray Mahto armed with gun. Of them, Suraj Mahto assaulted him by means of butt of gun on his left shoulder, Ganesh Mahto and Jhagru Mahto slapped him on his chick, Ramjee Mahto and Ramashray Mahto assaulted him on his back by feet and fists and warned him not to raise hulla otherwise would be killed. Firing was also shot but did not hit anyone. Further, it is claimed that Shivmuni Lohar, Sipahi Singh and inmates of the house identified accused persons who took away watch, cloths, ornaments of gold, silver and cash.

2. After trial, accused-appellants have been convicted and sentenced for the offence u/s 395 of the I.P.C.

3. In all 8 witnesses are examined in the case and they are P.W.1 Ram Prasad Ojha, P.W.2 Shivmuni Sharma, P.W.3 Ramashish Ram, P.W.4 Kaushalya Devi P.W.5 Budhiya Devi, P.W.6 Ram Jatan Singh, P.W.7 Gupteshwar Singh, P.W.8 Sarjug Singh.

4. P.W.1 to P.W.3 state about their coming to know the incident without referring its source or informed by the informant. P.W.4 is family member of the informant. She was sleeping in her room not claiming to identify any of the accused persons rather in para-3 of her cross examination is stating that the accused appearing in her room were covering their face. P.W.5 is also one of the family members of the informant states about no overt act by dacoits without naming anyone. P.W.6 is also one of the family members of the informant and is not naming anyone and next family members is P.W.7, he was sleeping at his Dalan came after taking place of the incident saw accused persons fleeing but with no article and last one is P.W.8 informant of the case.

5. In para-1 of her cross-examination, P.W.2 states about pendency of cases in between the parties and P.W.8 informant of the case giving detailed of the case. In case of firing upon Kanhaiya, brother of one of the accused persons namely, Ramjee Mahto, allegation of firing was upon this witness. In a case by Ram Prasad Ojha in which Ganesh Mahto was one of the accused persons this witness had given evidence and in present case, Ram Prasad Ojha was also a witness. This is relevant for consideration of the Court that enmity was there in between the parties for the false implication.

6. On the point of identification, para-3 of P.W.4 and para-2 of cross-examination of P.W.7 are referred. P.W.4 states about covering of face by the dacoits, while P.W. 7 states about not covering of face by any of the dacoits. Another point is that none of the witnesses state about watching dacoits with articles, while they left the informant's house. Another relevant circumstance is that I.O. is not examined in the case. Examination or non-examination of I.O. is relevant on the point that all the accused persons are villager of the informant having enmity with him but no action was taken by the prosecution (informant) for apprehension of accused persons or recovery of looted articles.

7. These are the facts to doubt taking place of the incident of dacoity which has not been considered by the Trial Court at all. So, the conclusion for conviction reached by it is not liable to be sustained.

8. With the observations made above, evidence on record and circumstances of the case, this criminal appeal is allowed. The Judgment of conviction and order of sentence passed by the 7th Addl. Sessions Judge, Rohtas at Sasaram in connection with Sessions Trial No. 179/214 of 1989/1991 are set aside.

9. All the accused-appellants are on bail. They are acquitted of their respective charges and discharged from their liabilities of bail bonds.

10. Let copy of the first page and last page of this judgment be handed over to the learned Amicus Curiae.

11. Office is directed to send the lower Court records along with copy of this Judgment to the Trial Court.