
(1996) 09 PAT CK 0017

In the Patna High Court

Case No : Criminal Appeal No. 73 (S.J.) of 1988

Wakil Mian and Nathu Mian

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 25-09-1996

Acts Referred:

Penal Code, 1860 (IPC) — Section 395

Citation : (1997) 1 PLJR 382

Hon'ble Judges : Narayan Roy, J

Bench : Single Bench

Advocate : Bashishtha Narayan Mishra and D.N. Tiwary, for the Appellant;
Madhuri and Chittaranjan Sinha, for the Respondent

Final Decision : Allowed

Judgement

Narayan Roy, J.—Heard counsel for the parties.

2. The Appellants have been convicted u/s 395 of the Indian Penal Code and sentenced to undergo R.I., for 8 years each.

3. P.W. 12, Suraj Raut lodged his tard beyan stating therein, inter-alia, that in the night of 24/25.8.1974, while he was sleeping in his house and P.Ws.4 and 11, namely, Rudai Sah and Sheonath Ram were sleeping outside the house, he heard some sound of knocking at the door and some dacoits entered in the house, broke open the door and they tied his hands and looted away cash, ornaments, clothes etc. from his house. On alarm, being raised, villagers collected over there and they chased the dacoits. On chase one of the dacoits, namely, Bhajan Bhagat was caught by the villagers. The informant further stated in his fardbeyan that he had seen the Appellants standing outside and he also came to know from P.Ws 4 and 11, namely, Rudal Sah and Sheonath Ram that these Appellants were also associates of the dacoits standing outside the house.

4. On the basis of the fardbeyan, a First Information Report was drawn up and a case u/s 395 of the Indian Penal Code was instituted against the Appellants and

certain unknown persons. After completion of investigation, charge-sheet was submitted against the Appellants and they were put on trial and ultimately found guilty and they were, thus, convicted and sentenced as indicated above.

5. The defence of the Appellants is denial of the occurrence and have pleaded innocence.

6. The prosecution has examined as many as 20 witnesses. Out of them P.W. 1, Rameshwar Prasad is a formal witness, P.W.2, Shankar Raut is hearsay witness, P.W.4 is Rudal Sah, one of the material witnesses in the case, P.W. 12 is Suraj Raut, the informant, P.W. 11 is Sheonath Ram, Anr. material witness, P.W.8 is son of the informant, P.W.13 is the I.O. of the case, P.Ws. 3, 5, 6, 9, 15, 16, 17 and 18 are tender witnesses, P.W. 19 has been declared hostile and P.W.20 is a witness on the point of enmity in between the Appellants and Nayan Raut.

7. In this case P.Ws.4, 11 and 12 are material witnesses P.W. 12, the informant has stated in his evidence that the dacoits entered into his house by breaking open the door and out of them he had identified the Appellants standing outside the house. He has further stated in his evidence that all the dacoits had covered their faces.

8. P.W.4, Rudal Sah has stated in his evidence that he along with P.W. 11 Sheonath Ram was sleeping in the outer verandah of the house and dacoits had tied their hands and after breaking open the door entered into his house and looted away the house holds articles. He further stated in his evidence that all the dacoits had covered their faces and he could not identify any of them.

9. P.W. 11 Sheonath Ram, however, has stated in his evidence that he had identified these two Appellants, who were standing outside the house. He has also stated in his evidence that dacoits had covered their faces.

10. P.W. 13, the I.O. has stated in his evidence that he had reached the place of occurrence the next day of the occurrence and had recorded the statements of the witnesses. He has categorically stated in his evidence that P.W.11, Sheonath Ram had not stated before him that he had identified these Appellants as associates of the dacoits.

11. The evidence of P.W. 12, the informant is not verbatim, the same as per the First Information Report and there appears to be certain major contradictions. In the First Information Report, he had stated that he had seen these two Appellants standing outside the house but in the evidence he has said that he had seen them fleeing away.

12. It appears from the records of the case that the Appellants are the resident of same village. It has also come in evidence that all the dacoits had covered their faces. Since P.W. 11 had not stated about the identification of the Appellants before the I.O. P.W. 13, much reliance cannot be placed upon his testimony where he has said in his evidence that he had identified these two Appellants.

13. P.W. 6, Chhotelal has stated in his evidence that there was enmity in between the Appellants and his brother, Nayan Raut as the Appellants had instituted a criminal case against Nayan Raut. However, the evidence of P.W. 6 is not of much importance inasmuch as that Nayan Raut has neither been examined in Court nor before the police.

14. I find material contradictions in the evidence of P.Ws. 11 and 12 and also in the evidence of P.W.4. P.W. 12 has stated in his evidence that apart from seeing these Appellants associates of the dacoits, he had also come to know from P.Ws. 4 and 11 about the name of the Appellants. P.W.4 has not stated in his evidence that he had disclosed the names of the Appellants before the informant. Likewise, P.W. 11 had not also stated before the police that he had identified the Appellants and he had disclosed their names before P.W. 12 the informant.

15. Since the Appellants were resident of the same village and as per the evidence, all the dacoits had covered their faces, the evidence of P.Ws. 4, 11 and 12 must be taken into consideration with caution. It has come in suggestion to the prosecution witnesses that the Appellants were inimically disposed towards Nayan Raut. However, no positive material has come forward in the evidence of the witnesses to corroborate the same. It appears that the Appellants are father and son and are resident of the same village.

16. In absence of any other cogent evidence besides the evidence of P.Ws. 4, 11 and 12, in my opinion, the prosecution has not proved the case against the Appellant beyond all reasonable doubts.

17. In the facts and circumstances of the case, Appellants are entitled to get benefit of doubt. I, therefore, allow this appeal and set aside the judgment and order of conviction and sentence passed against the Appellants. The Appellants are on bail. They are, therefore, discharged from the liability of the bail bonds.