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Court : Patna

Decided On : Dec-17-1999

Judge : D.P.S. Choudhary, J.

Appeal No. : Cr. Appl. No. 349 of 1993 (S.J.)

Appellant : Usman Ali

Respondent : State of Bihar

Disposition : Appeal Dismissed

Prior history : D.P.S. Choudhary, J. 1. This appeal has been preferred against the judgment and order dated 10th day of September, 1993 passed by the Additional Sessions Judge, Kishanganj in Sessions Trial No. 474 of 1990, convicting the accused-appellant Usman Ali under Section 395 of the Indian Penal Code (hereinafter referred to as the 'I.P.C.') and sentenced him to undergo R.I. for 10 years. 2. The prosecution case according to the fardbeyqn (Ext. 2) recorded on the statement of the informant Khabiruddin

Judgement :

D.P.S. Choudhary, J.

1. This appeal has been preferred against the judgment and order dated 10th day of September, 1993 passed by the Additional Sessions Judge, Kishanganj in

Sessions Trial No. 474 of 1990, convicting the accused-appellant Usman Ali under Section 395 of the Indian Penal Code (hereinafter referred to as the 'I.P.C.') and sentenced him to undergo R.I. for 10 years.

2. The prosecution case according to the fardbeyqn (Ext. 2) recorded on the statement of the informant Khabiruddin is as follows;

3. Village Mohania is situated at the border of West Bengal and at a short distance there is border of Bangladesh. There used to be regular dacoity in the village by the criminals crossing the village. So the villagers had formed a guard squat in the village. On the night of 1/2-12-1989 the informant Khabiruddin (P.W. 6) along with Ali Hussain (P.W. 2), Salahuddin (P.W. 1), Kasimuddin (P.W. 8), Hafizur Rahman and Kamruzzaman (P.W. 4) and other villagers were guarding the village. At about 12.30 hours in the night about 20-25 persons who were variously armed, entered into the village and attacked on the, aforesaid persons. The guard squad fled away in different directions rescuing themselves and raised hulla. Khabiruddin (Informant) identified the accused Asir, Shahabuddin and three others among the dacoits in the flash of the torch light. It is said that accused-appellant broke open the Matti of the house of the informant and others and looted away several houses and took away various articles. They also looted herds of cattles of the aforesaid persons. On alarm, some villagers assembled then the dacoits lied away. The villagers chased the dacoits away and after covering the distance of about 1 kilometre they caught one of the dacoits in the field who was armed with Danda. They also recovered six herds of their looted cattle in another paddy field. The remaining dacoits field away. The dacoit who was arrested gave his name as Usrman Ali (the appellant), resident of village Bobra, P.S. Belidangi, District East Dinajpur (Bangla Desh). He also named some of the accused including Asir and Shahabuddin among the dacoits.

4. On the aforesaid fardbeyan recorded on the same night at about 3.00 a.m., by the S.I. of Paharkatta (P.W. 9) and on the basis of which the case the registered and formal F.I.R. was drawn up on 3.12.1989 at 8.00 a.m. After investigation charge-sheet was submitted and after commitment the trial proceeded in the Court below. There were altogether live accused-persons in this case but two of them,

namely. Poliya and Badrui remained absconding, therefore, after separating the trial this sessions case proceeded against three accused-persons, out of which two others acquitted and only accused-appellant was convicted.

5. The case of the defence is that he is innocent and has been falsely implicated in the case because of previous enmity.

6. The prosecution has examined altogether nine witnesses including the informant and other eye-witnesses referred to above in whose presence the appellant was apprehended by the villagers, The I.O. of the case (P.W. 9) also visited the place of occurrence. The, I.O. stated that when he visited the place of occurrence the accused-appellant was handed over to him. P.Ws. 6, 8 and 9 have also stated that after chase the accused-appellant was arrested from the field and thereafter some herds of looted cattle were also recovered. On the basis of the evidence and considering the fact that the accused-appellant was apprehended near the place of occurrence after chase by the villagers the trial Court found him guilty for the offence under Section 395, I.P.C. and convicted accordingly.

7. After considering the evidence on record, I am of the view that the trial Court has rightly convicted the accused-appellant under Section 395 of the I.P.C. and it does not require any interference.

8. The learned appellant's Lawyer submitted that the accused-appellant Usman Ah was arrested on the date of occurrence itself, i.e., in the night of 1/2.12.1989 and since then he is in jail custody. He was not enlarged on bail on any occasion. As such, he has served the period of his sentence 10 years awarded against him.

9. From perusal of the case record, I find substance in the contention of the learned Lawyer.

10. In the result, the appeal is dismissed and the Jail Superintendent, Kishanganj is directed to release the accused-appellant, forthwith, if not released as yet or not wanted in any other case.